

fidh

VIASNA human rights center

Death Penalty in Belarus: Murder on (Un)lawful Grounds

October 2016 / N° 683a

Cover photo:
Death row cell in Pretrial detention centre No. 1 in Minsk. Source: Human Rights Centre “Viasna”

TABLE OF CONTENTS

INTRODUCTION

"If you, a degenerate scumbag, go and repeatedly commit a crime, if you commit murder, what right do you have to live on this earth? I'm not bloodthirsty, but the punishment must fit the crime. Take control of this. Otherwise we will never establish order and bring down this fever in society. These are grave, especially grave offenses: if you are guilty, you must pay the ultimate price."
Aliaksandr Lukashenka
President of the Republic of Belarus
November 2013 [1]

"Many people today do not think about the fact that people are shot right here in Minsk, on Valadarski Street, and that people who enforce sentences and thereby commit legalised murder walk among us and take the same public transportation. Those who hand down death sentences, forensic medical experts who certify death, and those who pull the trigger - they all live around us."
Andrei Paluda
Coordinator of the campaign
"Human Rights Defenders against the Death Penalty in Belarus"

In June 2016, FIDH and its member organisation in Belarus, the Human Rights Center "Viasna" (HRC "Viasna"), conducted an international fact-finding mission on the issue of the death penalty in Belarus. Members of the mission included Andrei Paluda, coordinator of the campaign "Human Rights Defenders against the Death Penalty in Belarus", Aida Baijumanova, Deputy Chairwoman of the Management Board of the "Bir Duino Kyrgyzstan" Human Rights Movement, and Julia Ouahnon, FIDH Eastern Europe and Central Asia Programme Officer.

The subject of the death penalty in Belarus is shrouded in high secrecy. On the whole, even detention conditions in Belarusian prisons have been the subject of very little research, but the subject of "death rows" is especially closed. There are no published official sources of information on this subject. There is practically no citizen oversight over the places where death-row inmates are held. Thanks to the tireless efforts of human rights defenders and journalists, some statistics on the enforcement of sentences are available. However, the information civil society has access to is far from complete.

Participants of the FIDH-HRC "Viasna" mission met with former prisoners, relatives of persons sentenced to death and executed, lawyers, journalists, experts and activists of non-governmental human rights organisations.

Acknowledgments

FIDH thanks its member organisation in Belarus, HRC "Viasna", and the employees of HRC "Viasna" for their assistance in preparing the international fact-finding mission on the death penalty in Belarus and for consultations during work on the report, in particular Andrei Paluda, coordinator of the campaign "Human Rights Defenders against the Death Penalty in Belarus", and lawyers Pavel Sapelka and Valiantsin Stefanovic.

FIDH also thanks all those who agreed to be interviewed during the mission, in particular the families whose relative was executed or sentenced to death, without whose first-hand accounts our research could not have been complete.

1. Lukashenka, speaking about the killer of a girl in Homiel: "What right do you have to live on this earth?" Homiel Today, 11/15/2013, see: http://Homieltoday.by/rus/news/Homiel/47860/, in Russian only.

Political Context

The Republic of Belarus is a country in the center of Europe with an area of 207.6 thousand km^2 and a population of about 9.498 million people. Belarus is the last country in Europe and the last of the post-Soviet countries in which the death penalty is legally codified and that continues to apply death sentences.

The use of the death penalty (execution by shooting) in Belarus is provided for by Art. 24 of the Constitution of the Republic of Belarus as an exceptional measure of punishment for the most serious crimes.

Apart from the very fact of taking a person's life, which is not only cruel, but also ineffective in fighting and preventing crime, the use of the death penalty in Belarus is accompanied by many gross human rights violations. Physical and psychological pressure is used for the purpose of obtaining a confession of guilt, and many other due process violations lead to the imposition of a death sentence in unfair trials. While on death row, death convicts are under tremendous psychological pressure due to the uncertainty of their fate; their contacts with family and their right to defence are severely circumscribed; and their correspondence is controlled by the administration of the pretrial detention center, which frequently restricts it; during the few meetings with family that are allowed, convicts are brought out in degrading conditions.

According to evidence obtained, persons sentenced to death are kept in total isolation, they are forbidden to take walks, and prison staff treat them as if they are no longer "among the living." Isolation makes them especially vulnerable to physical and psychological coercion. Conditions of detention on death row have repeatedly led to suicide attempts. The bodies of executed persons are not released to their families, and the time and place of execution, as well as the place of burial are kept secret, leaving relatives in a state of uncertainty, unable even to bury the body in accordance with family traditions and beliefs.

Soviet authorities in Belarus used the death penalty extensively to suppress political dissent. It was used as a punishment not only for murder, but also for economic crimes, such as producing counterfeit money, bribery and speculation, as well as crimes against the state and counterrevolutionary acts, including high treason and espionage.

Contemporary Belarus, which has preserved many repressive practices of the Soviet Union, is a successor to Soviet traditions, including the use of the death penalty. After the dissolution of the USSR and Belarus's independence in 1991, and up until 1999, when the new Criminal Code was adopted, Belarus continued to apply – with several amendments – the "Soviet" Criminal Code, which prescribed the use of the death penalty for over 30 crimes. The Constitution of the Republic of Belarus, adopted in 1994, preserved the death penalty for particularly grave crimes "until it is abolished". It should be noted that the original draft of the Constitution of the Republic of Belarus in 1991 did not provide for the death penalty, but a constitutional majority needed to adopt it could not be achieved. After long debates and several votes in Parliament, a constitutional majority (243 deputies) voted on 30 November 1993 in favour of Art. 24 of the Constitution, allowing the death penalty.[2]

During the infamous referendum of 1996, initiated by Aliaksandr Lukashenka to introduce amendments and additions to the Constitution that would substantially broaden the powers of the president and turn Belarus from a parliamentary-presidential republic into a presidential one,

2. "The Death Penalty in Belarus", HRC "Viasna". 2016 https://spring96.org/files/book/en/2016-death-penalty-belarus-en.pdf, p. 53-55.

the country's citizens were offered a chance to express their opinion on a number of other issues of great public interest. According to official results (not recognised by the international community, since the referendum was conducted with gross procedural violations), 80.44% of Belarusians (4,972,535 people) voted against the abolition of the death penalty, and only 17.93% (1,108,226 people) voted in favour thereof.

Hary Pahaniayla, Chairman of the Legal Commission of the Belarusian Helsinki Committee (BHC), experienced lawyer, former judge and former president of the Union of Belarusian Defence Attorneys,[3] explained to the FIDH-HRC "Viasna" mission: *"The outcome of the voting on the abolition of the death penalty during the 1996 referendum should be seen as a result of the political struggle between Aliaksandr Lukashenka and the Parliament. The President enjoyed broad support among the population, unlike the Parliament. As a result, people voted in accordance with the President's opinion on matters put forward by the President, including with respect to the death penalty. They also voted against the proposals supported by the Parliament".*[4] Both then and later, Aliaksandr Lukashenka repeatedly spoke out in favour of the death penalty.[5]

Due to serious violations during the referendum, its results were declared unlawful and not recognised by international organisations, including the OSCE (Organisation for Security and Cooperation in Europe), Council of Europe and the European Union. (For example, the referendum campaign used an image of a "properly completed" sample ballot showing the option "against" the abolition of the death penalty checked). However, the Belarusian authorities continue to justify the use of the death penalty by citing the need to respect the people's will. It must also be emphasized that at the time of the referendum, the crime rate in the country was rather high, while the maximum punishment provided for in the Criminal Code - and an alternative to the death penalty - was 15 years of imprisonment. Longer prison terms and life imprisonment were introduced only in 1999.

Furthermore, the referendum was advisory in nature as regards the death penalty, and the Constitution of Belarus contains a clause allowing for a moratorium or full abolition. It is also important to recall the 2004 decision of the Constitutional Court of Belarus, pursuant to which it is not mandatory to call a referendum to abolish the death penalty.[6] Based on its analysis of Art. 24 par. 3 of the Constitution, the Constitutional Court found that "the matter of abolishing this type of penalty or, as a first step, declaring a moratorium on its use may be decided by the Head of State and the Parliament".

Human rights defenders and journalists fighting for the abolition of the death penalty refer to a new reality, noting that 20 years after the referendum, laws, society and, accordingly, public opinion on the question of the death penalty have changed. FIDH member organisation HRC "Viasna" leads a campaign called "Human Rights Defenders against the Death Penalty in Belarus",[7] launched in 2009 jointly with the Belarusian Helsinki Committee, with the aim of gaining public support for the abolition of the death penalty in Belarus. In addition to awareness-raising activities, the campaign is focusing on legal aid to family members of death convicts. Human rights defenders have observed noticeable changes in public opinion concerning the use of the death penalty.

---

3. Hary Pahaniayla was disbarred in Belarus in 1997 for participating in the defence in high-profile political cases. Throughout his career as a lawyer, Harry Pahanyayla represented defendants accused of death eligible crimes and lodged individual complaints with the UN Human Rights Committee.
4. FIDH-HRC "Viasna" mission interview with Hary Pahaniayla, 30 June 2016.
5. "Lukashenka: I will never agree to a moratorium on the death penalty, because I am a servant of my people," from the annual assembly to the Belarusian people and to the National Assembly, http://news.tut.by/politics/288026.html, in Russian only.
6. "The Use of the Death Penalty as a Form of Criminal Punishment", http://mvd.gov.by/main.aspx?guid=9091, in Russian only.
7. "Human Rights Defenders Launch Campaign against the Death Penalty", http://dp.spring96.org/en/news/26884.

According to a public opinion survey conducted in 2016 by the Independent Institute of Socio-Economic and Political Studies (IISEPS), approximately 37% of the population supports the abolition of the death penalty – almost twice as many as 20 years ago.[8] The number of people who support the death penalty dropped during the same period by almost 30 percent.[9] Research conducted in 2014 by the public survey firm "Satio", commissioned by the Belarusian Helsinki Committee and Penal Reform International shows that the number of abolitionists is even higher: according to the results of a general survey of Belarusians' attitudes toward the death penalty, 43.3% supported the immediate or graduate abolition of the death penalty in Belarus.[10]

In an interview conducted during the FIDH-HRC "Viasna" mission, human rights defenders and journalists mentioned that the authorities do no awareness-raising work with the public in this area. According to the above-cited study, a third of the Belarusian population is unaware that the death penalty is used in their country.[11]

Furthermore, government officials – first and foremost the President Aliaksandr Lukashenka – and state-owned media promote the development of positive attitudes toward the death penalty by focusing the attention of public opinion on the gravity of crimes committed by death convicts. They subsequently use the favourable public opinion to their advantage, claiming that society is not ready for the abolition.

Another argument frequently used by the authorities in favour of the death penalty is an unfounded assertion that the death penalty reduces crime rates. In fact, the number of especially grave offenses in Belarus continues to grow: in 2015, the Ministry of Internal Affairs reported 4,018 such offenses[12] – an increase of 17% compared to 2014 (3,417) and an even higher increase compared to 2013 (2,190) or 2012 (1,686).[13]

"Speaking of the supposedly deterrent effect of the death penalty, it should be recalled that Belarus remains among the countries with the highest homicide rates",[14] noted Hary Pahaniayla in his interview with the FIDH-HRC "Viasna" mission.

The interviews conducted during the mission attest to a lack of political will to tackle the societal problems that lie at the heart of a high crime rate. For example, Adarya Gushtyn, a journalist, lawyer and coauthor of the book "The Death Penalty in Belarus",[15] stated:

"The state does not do enough to combat domestic violence, the high level of alcohol and drug use, and poverty – factors that are directly linked with the high homicide rate".[16]

8. "Survey: 51,5% of Belarusians favour keeping the death penalty in Belarus, April 4, 2016, http://4esnok.by/obshhestvo/opros-515-belorusov-vystupayut-za-soxranenie-v-strane-smertnoj-kazni/, in Russian only.
9. Ibid.
10. "Crime and Punishment: "Societal Perception, Assessments and Attitude," report by the Sato Group of Companies ordered by Penal Reform International and the Belarusian Helsinki Committee, http://belhelcom.org/sites/default/files/Итоговый%20отчет2014_исправлен(2).pdf, in Russian only.
11. "Research Shows: Belarusians Fear Innocent People May Be Executed by Firing Squad. Opinions "For" and "Against" the Death Penalty are Divided," http://news.tut.by/society/369588.html, in Russian only.
12. General Statistics for the year 2015, http://mvd.gov.by/main.aspx?guid=256493, in Russian only.
13. "Criminal Belarus: There Were Fewer Thefts, but More Especially Serious Offenses in 2014." http://news.tut.by/society/433456.html, in Russian only.
14. FIDH-HRC "Viasna" mission interview with Hary Pahaniayla, 30 June 2016.
15. "The Death Penalty in Belarus." HRC "Viasna." 2016. https://spring96.org/files/book/en/2016-death-penalty-belarus-en.pdf.
16. FIDH-HRC "Viasna" mission interview with Adarya Gushtyn, 28 June 2016.

The secrecy surrounding death sentences and their enforcement obviously contradicts the authorities' argument that maintaining the death penalty is necessary in order to reduce the crime rate.

There have been at least three cases where authorities did not communicate the handing down of a death sentence. The public would not have learned of these death sentences unless human rights defenders and journalists had not made individual inquiries and research on these cases.

"The authorities pursue a policy of withholding information about executions. Therefore the argument that using the death penalty prevents future crimes does not stand up to criticism, since the public is deliberately deprived of information on death sentences. As a result, the statistical data that we have concerning the imposition of death sentences is incomplete, inasmuch as it is not corroborated by official information. It is even harder to get information on executions".[17]

In May 2016, for example, human rights defenders learned of the execution of Siarhei Ivanou, the killer of a girl in Rečyca, from a statement made in court by Siarhei Khmialeuski, another death-row inmate, who had shared a cell with Ivanov. As Khmialeuski explained in the Supreme Court during the hearing of his appeal, he was unable to sleep that night, awaiting his cellmate's return and hoping that perhaps he had been taken out for some reason other than execution. In the morning, though, prison employees ordered Khmialeuski to hand them all of Ivanov's belongings; they accompanied their order with comments insinuating that Ivanov would no longer be needing those things.

Finally, the evidence gathered by the mission allows to conclude that the legal system in Belarus on the whole is neither free nor independent, and that torture and cruel treatment in closed institutions and in the Belarusian system of law-enforcement agencies remain an endemic problem. Solving this problem is possible only in conditions when all incidents of cruel treatment are impartially investigated and those responsible are held accountable.[18]

A detailed study of the system of justice and the use of torture and cruel treatment in Belarus, however, is beyond the scope of this report, which is devoted to topics directly related to the use of the death penalty in Belarus. Nevertheless, the fatality and unlawfulness of confessions obtained under torture obviously lead to unfair sentences and potentially to the execution of the innocent.

In February 2010, a parliamentary Working Group was formed in the Belarus National Assembly to study problems associated with the death penalty.[19] Mikalai Samaseika, then Chairman of the Commission on Foreign Affairs, put forward an initiative to study the possibility of restoring the Belarusian Parliament's special guest status to PACE (the Parliamentary Assembly of the Council of Europe). In Deputy Samaseika's opinion, this would have contributed to a more effective parliamentary diplomacy in promoting national interests and developing bilateral contacts. Lukashenka supported the proposal and ordered the matter be studied.

Meanwhile, Mikalai Samaseika repeatedly emphasized that it was not among the Working Group's objectives to persuade citizens either in favour of the abolition or against it.

"The objective of the Working Group is not to persuade citizens to support or to oppose the abolition of the death penalty, but only to raise awareness of the problems that are associated with the use of this

17. FIDH-HRC "Viasna" mission interview with Adarya Gushtyn, 28 June 2016.
18. See Report on the Results of Monitoring of Detention Facilities in the Republic of Belarus. HRC "Viasna," 2015 https://spring96.org/files/book/ru/2013_prison_conditions_ru.pdf, in Russian only.
19. "Persons Sentenced to Life", http://www.b-info.by/news/15133/index7.html. In Russian only. See also http://house.gov.by/index.php/,1,24363,1,,0,0,0.html, in Russian only.

type of punishment", he said, for example, on 7 February 2014 before the closing conference of UNDP (United Nations Development Programme), "Facilitating the Improvement of the Court System in Belarus through the Development of the Specialization of Courts".[20]

According to him, the Working Group's program includes *"participation in various talk shows, seminars and round tables"*.

In 2013, for example, the Working Group, jointly with the Council of Europe, held a round table, "Religion and the Death Penalty"; and with support from the European Union and the Moscow Office of the organisation Penal Reform International - a round table "Crime and Punishment: Public Perception".

In reply to a question from BelaPAN (the Belarusian Private News Agency) about what would be the result of the Working Group's activity, the Mikalai Samaseika answered, *"We are not going to announce deadlines. The result should be some kind of a summary document presented as recommendations to either the House of Representatives – for instance, a proposal to conduct parliamentary hearings on the subject, or to other public institutions, or to the head of state, or it should be a summary document concluding whether the Republic of Belarus is or is not prepared to abolish the death penalty"*. Herewith he added that the result of the work could also be something else.[21]

According to available information, neither the Working Group nor Mikalai Samaseika filed an activity report before the end of Parliament's term in 2016. Moreover, the question of a sequel to the activities of the Working Group and its new Chairman remains open in the wake of the September 2016 Parliamentary election.

Information in Belarus is protected by two laws: the "Law on Information, Information Technology and the Protection of Information", and the "Law on State Secrets". The vague wording of these laws empowers a competent authority to classify - with a few exceptions, such as the gold reserve and population statistics - practically any information. There is no legal provision requiring that information on executions be classified, in practice, however, it is held secret. Procedural regulations on firing squads, the execution itself and the burial clearly exist but are not available to the public.

Furthermore, Aleh Alkayeu, former head of Pretrial Detention Centre No. 1 of the Penitentiary Department of the Ministry of Internal Affairs, who from December 1996 through May 2001 headed the firing squad (according to his testimony, 134 prisoners were executed by firing squad during this period), claims that he acted under an instruction on executions that was in force at the time he performed his duties. According to him, the instruction was marked "For internal use only". It provided guidelines on the procedures for enforcing the death penalty.

The exact number of persons executed in Belarus is unknown. Thanks to the tireless work of human rights defenders and journalists, the Belarusian public and the international community nevertheless do possess some information about verdicts handed down and executions. According to the Ministry of Justice of Belarus, 245 people were sentenced to death from 1994 to 2014.[22]

Human rights defenders believe that since Belarus gained its independence in 1991, over 300 people have been sentenced to death in Belarus and about 400 have been executed.

---

20. "The Working Group on the study of the issue of the death penalty does not aim to persuade citizens on the necessity to abolish the capital punishment", [available in Russian: http://www.open.by/country/119512].
21. "The Death Penalty in Belarus Will Not Be Abolished under Lukashenka," People's Will, http://www.nv-online.info/by/524/society/92459/, in Russian only.
22. Quoted from "Death Penalty in Belarus," p. 60, https://spring96.org/files/book/en/2016-death-penalty-belarus-en.pdf.

Full official statistical data on the use of the death penalty are not available, but we were able, using various sources, to establish the following chronology:

Number of death sentences since 1990[23]	**Number of persons executed since 1990**[24]
3 in 2016 (as of October)	1 in 2016 (as of October)
2 in 2015	0 in 2015
0 in 2014	3 in 2014
3 in 2013	0 in 2013
0 in 2012	3 in 2012
2 in 2011	2 in 2011
2 in 2010	2 in 2010
2 in 2009	0 in 2009
2 in 2008	4 in 2008
4 in 2007	1 in 2007
9 in 2006	2006 - not known
2 in 2005	2005 - not known
2 in 2004	5 in 2004 [25]
4 in 2003	
4 in 2002	In 1999-2003 : "not more than 7 persons a year"[26]
7 in 2001	
4 in 2000	
13 in 1999	
47 in 1998	
46 in 1997	
29 in 1996	
37 in 1995	
24 in 1994	
20 in 1993	
24 in 1992	
21 in 1991	
20 in 1990	

Based on the above information it can be concluded that the number of death sentences decreased significantly after the sentence of life imprisonment was introduced to the Criminal Code of the Republic of Belarus in 1999: whereas 47 death sentences were handed down in 1998, there were only 13 in 1999, and their number has decreased since, with a recent average of two-three sentences and two-three executions a year, with short "breaks" in some years.

23. Statistical data for 1990-1997 and 2010-2013: http://dp.spring96.org/en/why. Statistical data for 1998-2010, see also http://mvd.gov.by/ru/main.aspx?guid=9091. Statistical data for 2014: "Death Sentences and Executions in 2014, a Report by Amnesty International for 2014: https://www.amnesty.org/en/documents/act50/0001/2015/en/, Statistical data for 2015 and 2016: information on various Internet sites.

24. Source 2007-2016: https://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Belarus.

25. Source: "Number of death verdicts in Belarus," http://belhelcom.org/ru/node/18624, in Russian only.

26. Source: Minister of Internal Affairs Navumau in an interview to "Soviet Belarus" in November 2014.

"In Belarus, the execution of two or three people a year on average seems like some form of offering", [27] believes activist and journalist Palina Stsepanenka, one of the authors of the book "The Death Penalty in Belarus".[28]

The political component of this very important public discussion is also obvious. Interestingly, the Ministry of Internal Affairs of the Republic of Belarus states on its website, "An analysis of judicial practice enables us to conclude that progress towards limiting the use of the death penalty in the Republic of Belarus is irreversible".[29]

Depending on the domestic situation and relations with international organisations, especially the Council of Europe and the EU, the Belarusian authorities use different discourse concerning the abolition of the death penalty. A comparative analysis of periods when the death penalty was not used corroborates this finding. Although official Minsk continually stresses that the issue should not be used as a bargaining chip in relations with the West, negotiations between Belarus and its Western partners seem to always include the topic of the death penalty. The Council of Europe names the abolition of the death penalty as one of the conditions for restoring the special guest status[30] of the Parliament of Belarus in the Parliamentary Assembly of the Council of Europe.

On 10 March 2016, an international conference named "The Death Penalty: Transcending the Divide" took place in Minsk. It was organized jointly with Belarusian authorities and the United Nations Development Programme (UNDP) with the support of the Embassy of Great Britain. Invitees to the conference included high-ranking Belarusian officials, representatives of the international community, including EU Special Representative for Human Rights Stavros Lambrinidis, PACE Rapporteur on the situation in Belarus Andrea Rigoni, and former Minister of Foreign Affairs of the Czech Republic Karel Schwarzenberg. Belarus was represented by Valiantsin Rybakou, Deputy Minister of Foreign Affairs. Human rights organisations and journalists were invited to the conference's opening ceremony. This initiative was an important step in bringing the issue of the death penalty into the public sphere.

In the lead-up to the conference, however, FIDH deplored the fact that HRC "Viasna", its member organisation in Belarus and a leading organisation in the area of the human rights fight against the death penalty, had not been invited to the conference. The UNDP representative in Belarus publicly explained the decision referring to the fact that HRC "Viasna" was not a registered organisation. In its reply, FIDH expressed surprise at the UNDP's position, given that the UN Human Rights Committee had stated in two of its decisions that the closure of HRC "Viasna" in 2004 by the authorities was arbitrary, and demanded that the registered status of the association be reinstated.

The Chairman of the Permanent Commission for International Affairs and National Security of the Council of the Republic, Uladzimir Sianko, declared at the conference, "The abolition of the death penalty is a historic inevitability and an important European trend which we will join sooner or later."[31]

---

27. FIDH-HRC "Viasna" mission interview with Palina Stsepanenka, 27 June 2016.
28. "The Death Penalty in Belarus," HRC "Viasna" p. 60, https://spring96.org/files/book/en/2016-death-penalty-belarus-en.pdf.
29. The Use of the Death Penalty as a Form of Criminal Punishment, http://mvd.gov.by/main.aspx?guid=9091, in Russian only.
30. See, e.g., "Belarus is striving toward the Council of Europe exclusively by inertia," http://naviny.by/rubrics/politic/2016/01/30/ic_articles_112_190863, in Russian only.
31. "SB — Belarus Today," "Speaking to the Point: 20 Years Later" http://www.sb.by/belarus/article/razgovor-po-sushchestvu-dvadtsat-let-spustya.html, in Russian only.

According to an interview conducted during the FIDH-HRC "Viasna" mission, the readiness of the authorities to resume the dialogue on the death penalty, in conjunction with an absence of executions in 2015 and up until April 2016, led a number of diplomats and the international community to conclude that Belarus had imposed a de facto moratorium on the death penalty, a delusion which formed a context to the above mentioned international conference. The execution of Siarhei Ivanou a month after the conference – the first since 2014 – unfortunately dashed these hopes.

In 2016, three people were sentenced to death in Belarus: Henadz Yakavitski (sentenced 5 January 2016 by the Minsk Regional Court), Siarhei Khmialeuski (sentenced on 15 February 2016 by the Minsk Regional Court), and Siarhei Vostrykau (sentenced on 19 May 2016 by the Homieĺ Regional Court). Hence four death convicts are now on death row, including Ivan Kulesh, who was sentenced to death on 20 November 2015.

By the end of the year, the number of death convicts could be even higher: *"We are closely watching at least two court proceedings in which, given the charges filed, the defendants may also be sentenced to death"*,[32] human rights defender Siarhei Sys told the mission.

Belarusian authorities often resort to yet another argument in favour of preserving the death penalty: international law in the area of human rights does not prohibit the use of the death penalty for the most serious crimes. Since 1981, the death penalty in Belarus has been applied only for murder committed under aggravating circumstances. One exception was a case against suspects of a bomb explosion in April 2011 in Minsk, Vladislav Kovalev (Uladzislau Kavaliou) and Dzmitry Kanavalau (see below for the specifics of this high-profile case).

The mother of Vladislav Kovalev (Uladzislau Kavaliou), who was executed in 2012, claims: *"Our legal system is built on admissions of guilt, which are obtained during the first hours after arrest in the absence of a lawyer. Throughout his entire trial my son maintained that his confessions had been obtained during the first interrogations, under torture and psychological pressure. The speed with which they sentenced and executed my son, and the fact that the Prosecutor General and the Minister of Justice were dismissed right before the court's judgment show that the case was purely political".*[33]

Indeed, the death sentence against Kovalev (Kavaliou) and Kanavalau in 2011 caused a massive public outcry. Fair trial violations were obvious even to uninformed citizens, and the hasty execution and destruction of all material evidence of the case perceptibly affected attitudes toward the death penalty. For the first time, representatives of the two largest Christian denominations in Belarus, Orthodox and Catholic, spoke out publicly against the death penalty.

Thus, the Metropolitan Archbishop of Minsk-Mahilioŭ, Tadeusz Kondrusiewicz, appealed in 2011 to the President of Belarus and the legislature to impose a moratorium on the death penalty.[34] Also in December 2011, theses on the death penalty were published by Metropolitan Philaret of Minsk and Slutsk, Patriarchal Exarch of All Belarus.[35]

Nevertheless, little is being done by religious organisations to work with the population to raise awareness and support to the abolition of the death penalty.

---

32. FIDH-HRC "Viasna" mission interview with Siarhei Sys, 27 June 2016.
33. FIDH-HRC "Viasna" mission interview with Lyubov Kovaleva, mother of Vladislav Kovalev, who was sentenced to death on 30 November 2011 and executed in March 2012, 27 June 2016.
34. Metropolitan Kondrusiewicz called on Lukashenka to abolish the death penalty, 3 December 2011, http://telegraf.by/2011/12/mitropolit-kondrusevich-prizval-Lukashenka-otmenit-smertnuyu-kazn, in Russian only.
35. Metropolitan Philaret of Minsk and Slutsk, Patriarchal Exarch of All Belarus: Theses on the Death Penalty, 13 December 2001, http://church.by/news/mitropolit-minskij-i-sluckij-filaret-patriarshij-ekzarh-vseja-belarusitezisy-o-smertnoj-kazni-nbsp-nbspo, in Russian only.

Palina Stsepanenka, a journalist and activist in the campaign against the death penalty, told the mission, *"When I was preparing six arguments against the death penalty, my task included finding a religious leader in Belarus from each Christian religious community – Catholic, Orthodox and Protestant*[36] *– and then interviewing them about the death penalty from the standpoint of their respective faith. You might have expected this to be a very easy task, especially since both the Pope and the Patriarchal Exarch of All Belarus, Metropolitan Philaret*[37] *of Minsk and Slutsk, had spoken out against the death penalty. But the task proved extremely difficult. All those whose names I had been given expressed their support for the death penalty! Furthermore, when I finally received permission to interview a priest, the believers who were around him when I arrived at that congregation, learned of the topic of the interview and literally attacked me and began screaming that I was protecting pedophiles.*[38]

36. 58% of Belarusian citizens consider themselves believers; 82% of believers belong to the Orthodox faith, 12% are Catholics, and 6% belong to other denominations, the most common of which is Protestantism, http://mfa.gov.by/upload/pdf/religion_rus.pdf, in Russian only. According to the 2009 census, those professing Judaism in Belarus constitute 0.13% of the population; and Islam, 0.3%.

37. "Orthodox church says "No" to death penalty – Belarus press review", http://belarusdigest.com/story/orthodox-church-says-no-death-penalty-belarus-press-review-14505.

38. FIDH-HRC "Viasna" mission interview with Palina Stsepanenka, 27 June 2016.

I. LEGAL REGULATION

I.1. INTERNATIONAL COMMITMENTS OF BELARUS RELATED TO DEATH PENALTY APPLICATION

Each time the issue of the death penalty is raised with the Belarusian authorities, they regularly remind the public and the international community that Belarus has not undertaken an international commitment to abolish the capital punishment. However, Belarus has undertaken different international obligations related to death penalty application. The latter are being systematically violated by the Belarusian government.

International law does not forbid use of the death penalty. However, the International Covenant on Civil and Political Rights (ICCPR, or the Covenant), together with other international instruments of human rights protection, such as the European Convention on Human Rights and the American Convention on Human Rights mention the death penalty as a carefully worded exception to the right to life that ensures that death penalty cannot be imposed without rigorous procedural safeguards, or against a certain category of people, such as juveniles, pregnant women and the elderly.[39]

As the abolitionist movement's campaign claiming that the death penalty is a human rights abuse in and of itself started to gain momentum in the 1980s, a growing number of states announced a moratorium or abolished the capital punishment. To date, the entire human rights community views the death penalty as a human rights violation. In more than 160 UN Member state countries, the death penalty has been abolished, phased out or not practiced.

In 1989, 33 years after the adoption of the Covenant itself, the UN General Assembly adopted the Second Optional Protocol to the ICCPR that gave abolition decisive new momentum. Member States which became parties to the Protocol agreed not to execute anyone within their jurisdictions. However, Belarus is not a party to the Second Protocol of the ICCPR.

In a series of six resolutions adopted in 2007, 2008, 2010, 2012, 2013 and 2014, the UN General Assembly urged States to respect international standards that protect the rights of those facing the death penalty, to progressively restrict its use and reduce the number of offenses which are punishable by death.

It should also be noted that in 1984, the UN Economic and Social Council adopted "Safeguards guaranteeing protection of the rights of those facing the death penalty". The same year, the UN General Assembly voted in favour of the latter safeguards. In 1995, in its resolution1995/57, the UN Economic and Social Council recommended the UN Secretary General to monitor the implementation of the given safeguards stipulating that "In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences". The safeguards expand the guarantees established by the ICCPR (they are explained in detail below) as follows:

---

39. William A. Schabas "The Abolition of the Death Penalty in International Law," https://books.google.fr/books?id=LGuT_DP4_eMC&pg=PA5&lpg=PA5&dq=abolitionist +movement+to+end+death+penalty&source=bl&ots=OeRi6r3iww&sig= AKOBDY AKOBDYaJoGD9Fuh7FVq2yfrVOcI&hl=fr&sa=X&ved=0ahUKEwjF1Pa-yanOAhXGuBoKHUc3AZoQ6AEIVTAH #v=onepage&q=abolitionist%20movement&f=false

Expansion of the categories of persons under special protection

Persons who have become insane are among those enjoying protection from death penalty along with pregnant women and minors.[40]

More explicit guidelines for due process and fair trial

The safeguards are more explicit than the ICCPR in detailing the circumstances in which capital punishment may be applied and explains in more detail the concept of the "competent court": death sentence may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts; it may only be carried out pursuant to a final judgment rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.[41]

Right to appeal

Furthermore, anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory.[42]

The right to seek pardon

The safeguards reiterate the right of the death convict to seek pardon, or commutation of sentence; pardon or commutation of sentence may be granted in all cases of capital punishment.[43]

Execution of death penalty

Capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceedings related to pardon or commutation of the sentence[44].

Minimum suffering

Finally, the safeguards stipulate that where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering.[45]

The analysis of the present report shows that the latter safeguards are not being respected by Belarus, or are respected formally but not in substance, as with the right to seek pardon. Therefore,

---

40. Par. 3 of the "Safeguards guaranteeing protection of the rights of those facing the death penalty," see http://www.ohchr.org/EN/ProfessionalInterest/Pages/DeathPenalty.aspx.
41. Par. 4 and 5 of the "Safeguards guaranteeing protection of the rights of those facing the death penalty," see http://www.ohchr.org/EN/ProfessionalInterest/Pages/DeathPenalty.aspx.
42. Par. 6 of the "Safeguards guaranteeing protection of the rights of those facing the death penalty," see http://www.ohchr.org/EN/ProfessionalInterest/Pages/DeathPenalty.aspx.
43. Par. 7 of the "Safeguards guaranteeing protection of the rights of those facing the death penalty," see http://www.ohchr.org/EN/ProfessionalInterest/Pages/DeathPenalty.aspx.
44. Par. 8 of the "Safeguards guaranteeing protection of the rights of those facing the death penalty," see http://www.ohchr.org/EN/ProfessionalInterest/Pages/DeathPenalty.aspx.
45. Par. 9 of the "Safeguards guaranteeing protection of the rights of those facing the death penalty," see http://www.ohchr.org/EN/ProfessionalInterest/Pages/DeathPenalty.aspx.

the frequent claims of the Belarusian authorities that its legislation on the application of the death penalty contains more safeguards than required by international law do not correspond to the actual state of affairs.

* * *

Belarus gained independence after the break-up of the Soviet Union in 1991. It is nevertheless a founding state of the United Nations.[46]

However, Belarus is the only European country that is not a member of the Council of Europe. The Parliamentary Assembly of the Council of Europe (PACE) assigned the Belarusian Parliament (then Supreme Soviet of Belarus) a special guest status on 16 September 1992. Several months later, on 12 March 1993, Belarus applied to join the Council of Europe (COE), and the Committee of Ministers of the Council of Europe assigned it the status of candidate country on 15 April 1993.[47] This status was suspended on 13 January 1997 as the result of a constitutional referendum held in 1996 that was deemed anti-democratic by the international community. On 30 January 2004, the Bureau of the PACE refused to reinstate the Belarusian Parliament's special guest status, noting that the causes for its suspension remained valid. Belarus is also the only country in Europe that has not acceded to the European Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols, even though it is a party to 13 other COE instruments (in the spheres of culture, education, law, combatting corruption and human trafficking, sports).[48] The European Convention on Human Rights is the only instrument that attempts to compile an exhaustive list of exceptions regarding the right to life and the only instrument that discusses the death penalty in a separate article.

Being a member to the Organisation for Security and Cooperation in Europe (OSCE), Belarus bears commitments in the sphere of human rights, including civil and political rights and respect for the rule of law. These commitments represent a politically enshrined promise to comply with the OSCE standards reflected in organisation's documents, including in the area of death penalty application. For example, withholding information about death verdicts and executions (see below) violates Belarus' commitments to the OSCE, pursuant to which countries using the death penalty should "make available to the public information regarding the use of the death penalty".[49]

The EU-Belarus Partnership and Cooperation Agreement was signed in March 1995. However, the ratification process has been suspended since 1997. The European External Action Service has repeatedly expressed its concern regarding the use of the death penalty in Belarus, and this topic has been raised by the EU during a wide range of meetings and on other international fora, such as the sessions of the UN Human Rights Council on the question of extending the mandate of the UN Special Rapporteur on Belarus.

In February 2016,[50] the EU suspended restrictive measures imposed on a number of Belarusian officials and enterprises directly involved in large-scale repressions following the 2010 presidential

---

46. When the United Nations was being created, two Soviet Republic – the Ukrainian Soviet Socialist Republic and the Belarussian Soviet Socialist Republic – were granted the status of independent members even though they were part of the Soviet Union because of their "special contribution to the fight against fascism." In this way, the USSR, which fully controlled both these republics, had three votes at the General Assembly, not one.
47. Council of Europe, http://mfa.gov.by/mulateral/organisation/list/a025a26a6670b494.html, in Russian only.
48. Council of Europe, http://mfa.gov.by/mulateral/organisation/list/a025a26a6670b494.html , in Russian only.
49. The Death Penalty in the OSCE Area, Background Paper, 2015, Annex on OSCE Commitments, pg. 31, http://www.osce.org/odihr/184581?download=true.
50. "Council Conclusions on Belarus", http://www.consilium.europa.eu/en/press/press-releases/2016/02/15-fac-belarus-conclusions/.

election. According to the statement issued by the EU's Foreign Affairs Council following the lifting of sanctions, "tangible steps taken by Belarus to respect universal fundamental freedoms, rule of law and human rights will remain key for the shaping of the EU's future policy towards Belarus".[51]

It is no surprise that the number of death sentences issued has started to rise again since EU sanctions were lifted in February 2016. Abolition of the death penalty was included in a list of desired reforms communicated by the EU to Belarus regarding the lifting of sanctions, and the immediate rise in sentences and enforcement of the death penalty seems to confirm the position of FIDH, HRC "Viasna", and that of many other human rights organisations that sanctions against Belarus should only be lifted if the government undertakes specific obligations to promote the rule of law.

The only international human rights treaties that are currently legally binding for Belarus are the ones that were adopted within the UN framework.

Treaty obligations

Belarus is a party to two fundamental UN human rights protection instruments: (a) the International Covenant on Civil and Political Rights (ICCPR); (b) and the UN Convention against Torture (CAT).

a) International Covenant on Civil and Political Rights (ICCPR)

The ICCPR is the main instrument for protecting civil and political rights since it imposes legal liability on states that have ratified it. The Covenant and its First Optional Protocol sets up a complaint procedure enabling individuals claiming to be victims of violations of any of the rights set forth in the ICCPR to appeal to the UN Human Rights Committee. Belarus ratified the International Covenant on Civil and Political Rights on 12 November 1973, it entered into effect on 23 March 1976. On 30 September 1992, Belarus went on to make a declaration regarding Art. 41 of the Covenant recognizing the competence of the UN Human Rights Committee regarding inter-state complaints. Finally, on 30 December 1992, Belarus ratified the First Optional Protocol enabling the UN Human Rights Committee to receive and consider communications from individuals.

Art. 6 of the ICCPR permits the use of capital punishment in limited cases. This article also states that "Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant". Below are the conditions that must be observed for use of the death penalty:

A final judgment rendered by a competent court

A death sentence may be enforced only in countries where courts have the authority to decide these questions. Competence is understood as the court's legal "ability" to exercise jurisdiction over individuals or "things" (property) that are the subject of court proceedings.

Right to seek pardon

Anyone sentenced to death shall have the right to seek pardon or commutation. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

51. Ibid.

Protection for certain groups

A sentence of death shall not be imposed for crimes committed by persons below 18 years of age and shall not be carried out on pregnant women.

Prevention of genocide

Under the Convention on the Prevention and Punishment of the Crime of Genocide, international law bans states from using the death penalty in such a way that deprivation of life constitutes the crime of genocide.

Death penalty only for the most serious crimes

The death penalty may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This means that in death penalty cases, everyone is entitled to a fair court hearing (Art. 14, ICCPR), the presumption of innocence (Art. 14 par. 2, ICCPR), and the right not to be subjected to torture or inhuman treatment (Art. 7, CAT).

* * *

The UN Human Rights Committee (hereinafter - UN HRC) monitors implementation of the ICCPR.[52] As of the present time, Belarus has submitted five reports to the UN HRC (its initial report and four periodic reports). The fifth and sixth periodic reports should have been submitted on 7 November 2001 and 7 November 2006, respectively, but the fifth report was only submitted on 30 August 2016 (was not yet available to the public), while the sixth has yet to be submitted.

The fourth periodic report of the Republic of Belarus[53], which was submitted in 1996, does not address the issues of torture and cruel treatment, detention conditions, or the use of the death penalty. The Belarusian government limited itself to a quotation from Art. 25 of its Constitution, which stipulates that "no one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment".

As a result, in its Concluding Observations regarding the fourth periodic report of 6 November 1997, the UN HRC expressed its concern about numerous reports of torture by police and other law enforcement officers in Belarus. Noting that investigations of such abuses are not conducted by an independent mechanism and that the number of prosecutions and convictions in these cases is very low, the Committee expressed concern that these phenomena could lead to impunity for the police and other security officials.

The Committee also noted with concern that the supervision of places of detention is under the competence of the Prosecutor's Office, and that there exists no independent mechanism competent to receive and investigate complaints by detainees. Moreover, the Committee expressed its concern at the overall conditions of detention in prisons, in particular with respect to overcrowding. It emphasized that the existence of "punishment cells", the fact that food rations are reduced for

52. A body of independent experts that monitors implementation of the International Covenant on Civil and Political Rights, a multilateral treaty adopted by the UN General Assembly on 16 December 1966 and ratified as of today by 168 countries, including the Republic of Belarus (ratified in 1992).
53. Report of states parties to the UN HRC,http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f84%2fAdd.4&Lang=en.

detainees placed in such cells, the use of pressovchiki (detainees or secret law enforcement agents who use torture against their cellmates to obtain a confession or testimony), and the conditions of detention of prisoners sentenced to death are matters of particular concern. Moreover, the Committee noted with concern that the number of death sentences and the number of crimes for which the death penalty is applicable under the Criminal Code was still very high. The Committee recommended that State Party consider the question of abolishing the death penalty without delay.[54]

The UN HRC also examines individual complaints with regard to alleged violations of rights enshrined in the International Covenant on Civil and Political Rights by States parties to the First Optional Protocol to this Covenant.

As will be described in detail below, in a number of decisions on death penalty cases, the UN HRC confirmed systemic violations of fundamental rights committed by Belarus, while six decisions to date confirmed the violation of the right to life.

b) UN Convention against Torture

Belarus ratified the UN Convention against Torture on 13 March 1987. It entered into effect on 27 June 1987. As of today, Belarus has submitted five reports (its initial report and four periodic reports) to the UN Committee against Torture. The fifth and most recent periodic report was submitted in December 2015.[55]

In the last report the Belarusian government states it has established stricter restrictions on the use of the death penalty than envisaged by international law. For example, law prohibits imposition of death penalty to women, individuals who committed a crime under the age of 18, and men aged 65 and above at the moment of the court ruling.

The report notes that the death penalty has an exceptional and temporary character and, until it is abolished, may only be used pursuant to a court sentence as an exceptional measure of punishment for several especially grave crimes involving premeditated murder committed under aggravating circumstances. To support its assertion that the death penalty has an exceptional nature, the government introduced the statistic that in the period of 2011–2014, six people were sentenced to death. It has to be noted that the latter statistical data fail to correlate with the figure that is carefully monitored and checked by the campaign "Human Rights Defenders against the Death Penalty in Belarus", referred to in the Introduction of the present report.

The government of Belarus also notes that following the parliamentary elections of 2012, the Working Group renewed its study of the issue of the death penalty used in Belarus as an exceptional measure of punishment. The report states that all death convicts have the right to file a petition for pardon with the President of the Republic of Belarus who has the authority to commute death sentence to life imprisonment.

The report also notes that the concept of a pretrial agreement on cooperation with the suspect (accused) was introduced into the criminal process in 2015. It states that the death penalty will not be used in respect of individuals who have entered into such an agreement, including individuals

54. UN Human Rights Committee, Consideration of Reports Submitted by States Parties Under Art. 40 of the Covenant, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f79%2fAdd.86&Lang=en.

55. Committee against Torture, Fifth Periodic Report of Belarus due in 2015, CAT/C/BLR/5http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2FC%2FBLR%2F5&Lang=en.

who have committed especially grave crimes for which the death penalty is prescribed. Instead, a sentence of life imprisonment is imposed. This may influence a future reduction in the number of death sentences.

However, an analysis by HRC "Viasna" and FIDH (see below) shows that pretrial agreements can lead to an increase in false confessions to avoid the death penalty. Additionally, the final decision on entering into a pretrial agreement lies solely with the prosecutor. If the prosecutor decides that cooperation was not satisfactory, a court will hand down a sentence without taking into account defendant's cooperation with the investigation.

In its report, Belarus notes that death convicts are held in separate cells under maximum security, and that in accordance with its obligations, death convicts have the rights established for individuals held in places of detention (Art. 174 par. 1 of the Criminal Law Enforcement Code). Our report will show in detail how the rights in Belarus' Criminal Law Enforcement Code are systematically violated.

Concerning its failure to notify relatives of the date of execution, Belarus notes that pursuant to the provisions of Art. 175 par. 5 of the Criminal Law Enforcement Code, the administration of the facility where the death penalty is carried out notifies of the execution the respective court that in turn shall notify a close relative. A detailed analysis of the latter provision and rights' violations stemming therefrom will also be presented in the present report.

Special procedures of the UN Human Rights Council

a) Universal periodic review (UPR)

The implementation of a state's obligations to the UN are also examined as part of the Universal Periodic Review process, a mechanism of the UN Human Rights Council that periodically analyzes human rights situation in all UN member states. On 4 May 2015, the situation is Belarus was considered as part of the second cycle of the UN universal periodic review regarding Belarus.[56] Belarus agreed to the following recommendations within the framework of this interactive dialogue: to carry out public campaigns explaining the arguments in favour of the abolition of the death penalty with the aim of ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights (the latter document aims at the abolition of the death penalty worldwide); and to consider imposing a moratorium on the death penalty and abolishing the death penalty. Belarus noted but rejected the following recommendations: to take concrete steps towards the abolition of the death penalty, including the imposition of a moratorium on its use; to ratify the Second Optional Protocol to the ICCPR; and to change the process of carrying out executions by notifying the family of the date of execution and burial site.[57]

b) Working Group on Arbitrary Detention

Another important human rights body is the Working Group on Arbitrary Detention - a special procedure of the Human Rights Council, whose mandate extends to all UN member states. This Working Group visited Belarus from 16–26 August 2004, including visits to 15 detention facilities: penitentiaries, prisons, pretrial detention centers (SIZOs), temporary isolation facilities, youth custody centers, administrative detention centers, facilities for asylum-seekers, psychiatric

56. UN Human Rights Council, Universal Periodic Review, Second Cycle, Belarus, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/155/88/PDF/G1515588.pdf?OpenElement.

57. UN Human Rights Council, Universal Periodic Review, Second Cycle, Belarus. Report of the Working Group, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/155/88/PDF/G1515588.pdf?OpenElement.

hospitals and police stations. Some of its visits were unannounced. It also had individual meetings, in private and without witnesses, with more than 200 detainees.

The Working Group report, prepared for the UN Human Rights Committee,[58] notes that conditions of pretrial detention are significantly worse than those of convicted persons. In these conditions, the presumption of innocence enshrined in the Constitution is seriously undermined.

From the beginning of detention, detainees are often put under strong psychological pressure to self-incriminate. In the view of the Working Group, such practices are contrary to the principle of international law under which no one shall be forced to testify against himself.

Moreover, the Working Group suggested that attempts to demonstrate effectiveness in combating crime lead to the fabrication of false cases from the very beginning of detention. The system of exercising pressure to obtain self-incrimination in pretrial detention and the over-reliance of judges on evidence, statements and protocols originating from the investigator make it impossible to challenge charges in this type of case. Lack of effective internal and external controls, such as that exercised by independent institutions, nullify the possibility of holding those fabricating cases to account.

The Working Group was informed that grave crimes (terrorism, organized crime, and the trafficking of drugs, arms and persons, etc.) and matters affecting politicians are usually entrusted to the KGB, whose agents act under the supervision of the Prosecutor.[59] The Working Group has noticed that in practice no authority exercises any control over the situation of persons held in KGB detention centers. The Working Group stresses that for those detainees, the risk of abuse is high and remedies are only hypothetical. Here, it should be recalled that Kanavalau and Kovalev, executed in 2012 (see below), were held in a KGB detention center during investigation.

c) Mandate of the Special Rapporteur on the situation of human rights in Belarus

The mandate of the Special Rapporteur on the situation of human rights in Belarus was first established by the Human Rights Council in resolution 2004/14. Adrian Severin was appointed Special Rapporteur for Belarus. In this resolution the Commission requested the Special Rapporteur to establish direct contact with the Government and the people of Belarus, with a view to examining the situation of human rights in this country. In June 2007, the Human Rights Council decided not to extend the Special Rapporteur's mandate despite the fact that on 17 May 2007 Belarus' candidacy for election to the Human Rights Council was rejected due to mass human rights violations in the country.

Mr. Severin submitted his first report on 11 March 2005.[60] The Government of Belarus did not respond favourably to his request to visit the country and did not wish to cooperate with him in the fulfillment of his mandate. To gather the required materials, the Special Rapporteur was forced to meet with his own correspondents, including Belarusian attorneys, human rights defenders, media representatives, associations, and independent unions in other countries.

58. Report of the Working Group "Civil and Political Rights including the Questions of Torture and Detention", https://documents-dds-ny.un.org/doc/UNDOC/GEN/G04/166/25/PDF/G0416625.pdf?OpenElement.

59. Aside from the Investigative Committee, KGB investigators may investigate some cases. No other bodies, including the Ministry of Internal Affairs, have investigative units. Since 2011, under the law KGB investigators may investigate criminal cases regarding the crimes stipulated in articles 124–126, 229, 289–290-5, Art. 294 par. 4, Art. 295 par. 4, Art. 309 par. 4, Art. 311 par. 3, Art. 322 par. 3, Art. 323 par. 3, Art. 324 par. 3, Art. 333 par. 2, and Art. 356–361-3, 373–375 of the Criminal Code of the Republic of Belarus.

60. "Report of the Special Rapporteur on the situation of human rights in Belarus, Adrian Severin", https://documents-dds-ny.un.org/doc/UNDOC/GEN/G05/129/94/PDF/G0512994.pdf?OpenElement.

In his report, the Special Rapporteur described several instances of the use of torture allegedly committed by representatives of the Belarusian government. Owing to the nature of the crime of torture and severe restrictions on access to victims in detention centers, death row facilities and the military, the Special Rapporteur believed that the relatively few cases that have come to light only represent the tip of the iceberg. He was particularly alarmed by the absence of reliable information, and the allegation that judges are systematically forced by the executive body to ignore evidence of torture and pass judgments based on confessions extracted through methods that include torture.

The Special Rapporteur supported the conclusions of the Working Group on Arbitrary Detention and called for the implementation of its recommendations.[61]

On 6 July 2012, the UN Human Rights Council adopted a resolution on the situation of human rights in the country and resolved again to appoint a Special Rapporteur to monitor the situation of human rights in the country. Mr. Miklós Haraszti was appointed to this position on 28 September 2012. Since then, his mandate was extended every year due to continuing human rights violations. However, the new Rapporteur has also not received an invitation to visit the country, and his mandate is rejected by the Belarusian Government as "biased".

In his report, which he submitted to the UN General Assembly on 21 April 2016, Mr. Haraszti noted the secrecy surrounding the death penalty.[62] The authorities do not release information about the number of executions carried out. Prisoners and relatives are not informed when an execution is due to take place, and relatives receive no prior notification. The bodies of the executed are not returned to relatives, but are buried in unmarked graves. This practice is maintained despite the numerous recommendations made by United Nations bodies, among others, over many years. He noted that the Government has continued its policy of disregarding individual complaints filed with the Human Rights Committee and proceeding with executions. The Special Rapporteur was particularly concerned that the recommendations made at the second universal periodic review on the ratification of the Second Optional Protocol to the ICCPR did not enjoy the support of the Government of Belarus. He also noted that the State has made no progress on recommendations it supported, such as on conducting public campaigns to explain arguments in favour of the abolition of the death penalty, nor on examining recommendations with regard to the establishment of a moratorium on the death penalty. Finally, he stated that in Belarus' highly centralized decision-making system, the absence of any progress on the issue of death penalty can be explained primarily as a result of a lack of political will on the part of the authorities of Belarus.

Non-observance of UN Decisions

It is important to emphasize that Belarus increasingly ignores UN decisions. It disregards the recommendations made by the UN special mechanisms on human rights protection but also the decisions by the UN Human Rights Committee, the Working Group on Arbitrary Detention and others. The Ministry of Foreign Affairs of Belarus declared that the decisions of the UN Human Rights Committee on individual complaints are not mandatory and thus to date, none of them has been brought into effect. Convicted prisoners on death row are being executed despite the fact that their individual complaints were registered by the UN HRC and despite the latter's formal requests to the authorities not to carry out death sentences while cases are under examination by the UN HRC.

61. Ibid.

62. "Report of the Special Rapporteur on the situation of human rights in Belarus", http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session32/Pages/ListReports.aspx.

In March 2013, following the 2012 decision of the UN Working Group on Arbitrary Detention in the case of Ales Bialiatski that confirmed his detention since August 2011 to be arbitrary, the Belarusian delegation officially declared it would not further cooperate with the latter UN mechanism.

To date, the UN Human Rights Committee has adopted eight Views[63] on death penalty cases against Belarus. The last six found that death sentence did not meet the requirements of a fair trial and, as a result, violated the right to life.

Importantly, in namely these six cases where the right to life was violated by Belarus,[64] the Belarusian authorities proceeded with executions despite the Committee's multiple requests not to carry the executions while the cases were under examination. In all six cases the Committee established confession of guilt under duress or torture, violations of the right to seek access to lawyer and the right to be presumed innocent (see below).

The sections below detail the violations of the rights of those accused of death eligible crimes and their family members. As accounted for by the interviewees with whom the FIDH-HRC "Viasna" delegation met during the mission, grave violations are being committed during all stages of proceedings, starting from arrest to execution.

The UN HRC has also condemned legislation and law enforcement practices with respect to secrecy surrounding the death penalty. The Committee concluded in its first decision on the case of death penalty against Belarus back in 2003[65] *(Communication No. 886/1999, Natalia Schedko vs. Belarus)*, that the secrecy surrounding the date of execution and the place of burial, and the refusal to hand over the bodies for burial, had the effect of intimidating or punishing families by intentionally leaving them in a state of uncertainty and mental distress that amounted to torture. The Committee called the authorities to provide family members of the executed with an effective remedy, including information on the burial location, and compensation for the anguish suffered, and to prevent similar violations in the future – an obligation that Belarus continues to disregard.

63. Schedko vs. Belarus (Views adopted in 2003, Communication No. 886/1999), Dimitry Kharkhal vs. Belarus (Views adopted in 2007, Communication No. 1161/2003), Lyubov Kovaleva vs. Belarus (Views adopted in 2012, Communication No. 2120/2011), Svetlana Zhuk vs. Belarus (Views adopted in 2013, Communication No. 1910/2009), Vasily Yuzepchuk vs. Belarus (Views adopted in 2014, Communication No. 1906/2009), Pavel Selyun vs. Belarus (Views adopted in 2015, Communication No. 2289/2013), Oleg Grishkovtsov vs. Belarus (Views adopted in 2015, Communication No. 2013/2010), Andrei Burdyko vs. Belarus (Views adopted in 2015, Communication No. 2017/2010).

64. Lyubov Kovaleva vs. Belarus, Svetlana Zhuk vs. Belarus, Vasily Yuzepchuk vs. Belarus, Pavel Selyun vs. Belarus, Oleg Grishkovtsov vs. Belarus, Andrei Burdyko vs. Belarus.

65. Natalia Schedko v. Belarus, Communication No. 886/1999, U.N. Doc. CCPR/C/77/D/886/1999 (1999). Views of the Human Rights Committee under Art. 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, http://hrlibrary.umn.edu/undocs/886-1999.html.

I.2. SHORTCOMINGS IN LAWS ON THE USE OF DEATH PENALTY IN BELARUS

Rules set forth in Art. 6 par. 2 and Art. 15 par. 2 of the law "On the International Treaties of the Republic of Belarus" and in Art. 20 par. 2 of the "Laws and Regulations of the Republic of Belarus" provide for direct applicability of international treaties, once the ratification acts of thereof enter into force.

Constitutional norms

The Constitution of the Republic of Belarus of 1994 adopted at a referendum on 24 November 1996, with amendments adopted at a referendum on 17 October 2004, is the Constitution currently in effect in Belarus.

Art. 24 of the Constitution guarantees every person the right to life, but stipulates that until its abolition, the death penalty may be applied in accordance with the law as an exceptional measure of punishment for especially grave crimes pursuant to a court ruling. It provides for execution by shooting for especially grave crimes of premeditated murder committed under aggravating circumstances. This article also lists exceptions to the use of the death penalty: women, individuals who committed a crime under the age of 18, and men aged 65 and above by the day of sentencing may not be sentenced to death. Art. 59 par. 1 of the Criminal Code of the Republic of Belarus addresses the possibility of abolishing the death penalty.

Art. 25 of the Constitution enshrines the principles of respect for human dignity. Art. 25 par. 3 bans torture and cruel, inhuman, or degrading treatment or punishment.

Pursuant to Art. 25 par. 2 of the Constitution, a person who has been taken into custody is entitled to a judicial investigation into the legality of his detention or arrest.

The right to life (Art. 24) and the ban on torture and other cruel treatment (Art. 25 par. 3) may not be restricted even in a state of emergency (Art. 63 par. 2).

In accordance with Art. 60 of the Constitution, every person shall be guaranteed protection of their rights and liberties by a competent, independent, and impartial court of law within the time-frames established by law. Art. 62 guarantees legal assistance to exercise and protect civil rights and freedoms (including free assistance in cases stipulated by law), and prohibits opposition to the rendering of this assistance.

Art. 114 of the Constitution stipulates that all court trials shall be open; hearings in a closed court session are only permitted in cases specified by law and in accordance with established rules of judicial proceedings. Art. 115 enshrines the principles of an adversarial judicial system and that of equality of arms.

Lack of Independence of the Judiciary

The analysis of the independence of the judiciary as such falls outside the scope of the present report. Yet it is crucial to refer to certain laws that call into question the effectiveness and legality of the administration of justice in Belarus that in death penalty cases have particularly serious and irreversible consequences.

The status of judges

In practice and under the legislation in force, and in particular under the Code on the Judicial System and the Status of Judges[66] (CJSSJ) and the Presidential Decree of 29 November 2013 No. 6 "On the Improvement of the Court System of the Republic of Belarus",[67] the Presidential Administration plays an active role in appointing judges. The President also has the authority to initiate disciplinary proceedings against judges.

Judges are appointed for a term of five years that can be extended another five years or for life (Art. 99, par. 4 of the CJSSJ). Thus, the principle of non-removability of judges is not respected in Belarus.

When a judge goes on leave, he is replaced by a retired judge or "other person who fulfills the requirements set for the judge position" (Art. 100, par. 1 of the CJSSJ). The latter provision does not require the substitute to be a candidate for a judge position, but only to "fulfill the requirements" for candidates. Accordingly, a substitute might be appointed to a judge position without having passed all due appointment procedures.

It is worth noting that the Code on the Judicial System and the Status of Judges was most recently amended by the Law No. 121-Z dated 4 January 2014 (the amendments concerned the operation of the Constitutional Court), and before that, in 2012 when amendments were introduced on the operation of military courts. Hence the code was not legally amended or repealed, but the structure of the courts and the authority of officials was amended by Presidential Decree No. 6 dated 29 November 2013 "On the Improvement of the Court System of the Republic of Belarus". This is a glaring example of how laws passed by the Parliament are arbitrarily repealed or amended by a Presidential decree, which occurs regularly in Belarus.

The 2013 Presidential decree did away with the most abhorrent rules, which made the courts dependent on the executive branch both de jure and de facto.

"Our judges do not have de facto independence, although de jure they do appear being more or less independent", thinks Pavel Sapelka.[68]

Under the Decree, the President may initiate disciplinary proceedings against courts of all levels. On the whole, the status of the courts in Belarus is characterized by extraordinary dependence on the President of Belarus and by a disregard for the principle of non-removability. In such a situation there can be no separation of powers, no independent judiciary, and no real judicial control either over the actions of the executive branch or over the investigators.

It is also important to note that amendments to the Code of Criminal Procedure of the Republic of Belarus were adopted on 20 April 2016, changing the procedures by which upper courts review court cases: the cassation review was replaced by the appellate review. An appeal is the review of a case on broader parameters, whereas cassation is an assessment of whether a sentence is in compliance with the law.

It must be noted that the jurisdiction of appellate courts following this year's amendments to the Code of Criminal Procedure ended up being the same as that of the courts of cassation.

---

66. Code on the Judicial System and the Status of Judges, 29 June 2006 г., No. 139-З, http://etalonline.by/?type=text&regnum=Hk0600139#load_text_none_1_.
67. Presidential Decree No. 3 of 29 November 2013, http://www.pravo.by/main.aspx?guid=3871&p0=Pd1300006&p1=1, in Russian only.
68. FIDH-HRC "Viasna" mission interview with Pavel Sapelka, 29 June 2016.

Criminal procedural law

The main source of criminal procedural law in Belarus is the Code of Criminal Procedure (hereinafter – CCP) of 16 July 1999, No. 295-343, which entered into effect on 1 January 2001. Since 1999, amendments to this Code have been made over 45 times.

The jurisdiction of regional courts, among others, includes cases on crimes against the peace and security of mankind and crimes against the State. The Supreme Court considers criminal cases against parliamentary deputies and judges (Art. 269 of the CCP). Regional courts and the Supreme Court may direct the lower courts to remit cases further up for review on consideration of their merits (Art. 268 par. 2 and Art. 269 par. 2 of the CCP). This violates the guarantee of a competent court envisaged in Art. 60 of the Constitution.

Suspects and persons accused of a crime are guaranteed the right to an attorney's assistance from the moment of their arrest or upon presentation of a decision finding a person to be suspected or accused of a crime (Art. 41 par. 2 subpar. (6) and (7) and Art. 43 par. 2 subpar. (5) and (6) of the CCP). The suspect and the accused person have the right to appeal in court an investigator's decision to apply preventive measures of restraint, including a decision on preventive detention (Art. 41 para 2 subpar. (17) and Art. 43 par. 2 subpar. (15) of the CCP). However, pursuant to Art. 44 par. 7 subpar. (2) of the CCP, the body in charge of the criminal process (junior investigator, investigator, judge) may remove the defence attorney from a criminal case if circumstances are discovered that would allow such a decision. Thus, there are severe restrictions on the right of a suspect or accused person to use the defence attorney of his choice.

An investigation may be conducted by three government bodies: the prosecutor's office, the KBG, and the Investigative Committee (Art. 36 and 182 of the CCP). it is important to emphasize that individuals who have provided confidential information to help solve a crime cannot be questioned as witnesses in a criminal case without their consent or the consent of the corresponding body of criminal investigation (Art. 60(2)(8) of the CCP). This provision provides the investigation with a source of evidence that cannot be tested by the defence or the court, as well as numerous opportunities to provoke crimes and use testimony obtained through torture and other forms of cruel, inhuman, and degrading treatment, even though a ban on the use of evidence obtained through torture is enshrined in Art. 8 par. 3 of the CCP.

Lack of independence of lawyers

The status of lawyers is determined by the "Law on the Bar Association and Lawyers' Activity" of the Republic of Belarus (30 December 2011, No. 334-3). Although Art. 4 of the given law stipulates the independence of lawyers, the latter are in fact under the tight control of the Ministry of Justice. Only lawyers who are members of territorial bar associations are allowed to exercise professional activity. The institute of private lawyers' activity was abolished by the President's decree in 1997.

Pavel Sapelka in his interview to the mission noted that *"The Ministry has the right to inspect the activities of lawyers: to study their financial statements, to verify the quality of lawyers' work, except for the data that is protected by attorney-client privilege. The latter, however, is formulated in the law in a very restricted manner. For example, previously the fact of addressing a lawyer was part of attorney-client privilege while currently it's not".*[69]

69. FIDH-HRC "Viasna" mission interview with Pavel Sapelka, 29 June 2016.

"The Bar Association is under full control of the Ministry of Justice, - considers Hary Pahaniayla, another lawyer disbarred for political reasons. *"The licence commission is headed by the Deputy Minister of Justice, the qualification commission is also under control of the Ministry. The latter also carries out attestations and prolongs lawyers' licences."* [70]

According to Art. 38 of the "Law on Bar Association and Lawyers' Activity," the Ministry, in addition to other functions, is in charge of forming the Qualification Commission and organizing its activities, determines the procedure for certification of lawyers, carries out the state registration of the bar associations, law firms, independent lawyers, and determines the procedure for amending the statutes of bar associations and law firms.

Thus, the Qualification Commission on lawyers' work, which organises qualification exams for lawyers and examines cases on lawyers' disciplinary liability, is composed not only of lawyers but also of "representatives of state institutions" and of "other law experts" (Art. 10, par. 1). The commission is chaired by the Deputy Minister of Justice (Art. 10, par. 2).

"Lawyers understand that they are tightly controlled. Up until their departure to study abroad. Leaving the country is also controlled. It is all being done in order to keep lawyers under Soviet-type oversight. As a consequence, the lawyers are afraid to go public, they are afraid to criticize the courts, investigative committees and investigators." [71]

The management of bar associations is also under the control of the Ministry of Justice. The latter is entitled to submit candidates for the chairman position of bar associations and to propose withdrawal of bar associations' chairmen.

The Ministry is given the authority to initiate disciplinary proceedings against lawyers, and to remove them from carrying out their professional duties for a period of such proceedings. The latter powers clearly violate the independence of lawyers. Disbarring a number of lawyers after the Presidential elections in December 2010 for defending numerous political prisoners demonstrated that lawyers have valid grounds for fearing their fate and career.

Lyubov Kovaleva (Liubou Kavaliova) reports: *"The first ex officio lawyer of my son was very afraid of publicity. She did not try to contact me. It was horrible. After that I tried to find another lawyer who would agree to defend my son. But lawyers refused because they were afraid of losing their jobs. We must remember that all this happened in 2011, immediately after the so-called presidential election and the political repression that followed and which resulted in many lawyers being disbarred and losing their licence. Those who didn't were terrified of losing their jobs."* [72]

Thus the "Law on Bar Association and Lawyers' Activity" violates key international principles ensuring independence of lawyers requiring that disciplinary action against lawyers shall be brought either before an impartial disciplinary institution established independently by lawyers or before a court that is subject to independent judicial supervision.

"Lawyers were quickly tamed and realised that if they don't abide by the rules they will lose their licence. I myself was a victim of such policy. We must not forget that roughly a dozen lawyers who defended those prosecuted during the wave of repression in 2010 were deprived of their licence." [73]

70. FIDH-HRC "Viasna" mission interview with Hary Pahaniayla, 30 June 2016.
71. FIDH-HRC "Viasna" mission interview with Hary Pahaniayla, 30 June 2016.
72. FIDH-HRC "Viasna" mission interview with Lyubov Kovaleva, mother of the executed Vladislav Kovalev, 27 June 2016.
73. FIDH-HRC "Viasna" mission interview with Hary Pahaniayla, 30 June 2016.

One of the lawyers deprived of his licence in the aftermath of 2011 political repressions was Pavel Sapelka. In an interview to FIDH-HRC "Viasna", he drew attention to the legislative restrictions on non-disclosure of case-related information.

Thus, in accordance with the Code of Criminal Procedure of Belarus, investigation authorities and courts may with virtually no restrictions prevent the defence from disclosing any information on the preliminary investigation of the case and any information on a closed trial. Any information obtained during the preliminary investigation is considered as information related to the case. *"This means that lawyers cannot publicly speak about anything related to the case. The nature of the prohibition is so vague, that lawyers prefer not to go public at all."* [74]

Par. 2 of the Art. 257 of the Code of Criminal Procedure stipulates that investigation authorities and courts have the authority to request a statement on nondisclosure from the defendant and his legal representative if a criminal case contains information containing state secrets. This is a direct reference to cases when the investigator must request a nondisclosure statement. He retains the latter authority in other cases, too, and uses it at his discretion. The law does not specify what data must not be divulged. In theory, all information is equally protected: the date of the interrogation and the content thereof, information about the dates of investigation actions and the content thereof, information on the state of health of the accused.

Failure to abide by the signed statement on nondisclosure entails criminal liability, as well as possible disbarment. Art. 407 of the Criminal Code provides for a punishment of up to three years, with or without deprivation of the right to hold certain positions or engage in certain activities.

Furthermore, according to the instructions of bar associations, lawyers must coordinate their public appearances with the bar association management.

"Violations of these instructions will not entail prosecution under Art. 407 of the Criminal Code, but a lawyer's public appearance without the consent of a bar association might have serious consequences for that lawyer." [75]

In addition to the issue of the lack of independence, the mission's interlocutors raised the issue of the professional competence of lawyers who defended those accused of death eligible crimes. Among the mission's findings is the fact that ex officio lawyers of defendants accused of death eligible crimes often lack necessary attorney experience and that they are all the more dependent on the system.

"Since members of the bar have been deprived of any independence, the fairness of court sentences comes under question. In death penalty cases, we just cannot be sure that the accused is being represented by an attorney who is independent and free to take any action or make any judgment", stated Pavel Sapelka.[76]

Andrei Kniazkou, former convict, told the FIDH-HRC "Viasna" mission that *"An attorney's work comes down to advising his client to agree with everything the prosecution requests or to admit to everything in the accusation. During the investigation, I was told that if I signed a document, I could go home. They [State Anti-Drug Control officers] use fear tactics, because OMON officers are right next to them. But they didn't use physical force in my case, because they knew about my drug addiction and used this to pressure me. I signed an honest confession before meeting with my attorney, my confession served as*

74. FIDH-HRC "Viasna" mission interview with Pavel Sapelka, 29 June 2016.
75. FIDH-HRC "Viasna" mission interview with Pavel Sapelka, 29 June 2016.
76. FIDH-HRC "Viasna" mission interview with Pavel Sapelka, 29 June 2016.

the basis for the charges, and I was sentenced to eight years in prison. I could have gotten five years if I hadn't signed the confession".[77]

Mission interviewees noted the poor quality of legal assistance provided by ex officio counsel and a systemic lack of necessary professional experience of lawyers appointed to defend individuals accused of death eligible crimes. Also, contrary to the commonly held opinion on free legal assistance, appointed attorneys provide legal services for a fee: if a defendant is found guilty, he or she must reimburse the defence's expenses, which are set by the state.

The report published by the Legal Information Center claims that, taking into account the lack of lawyers in Belarus and low remuneration of *ex officio* attorneys as well as the lack of minimum standards for free legal assistance stipulated in the Code of Criminal Procedure, neither the scope of the assistance provided, nor its nature or quality can be considered acceptable.[78]

Notably, the majority of people sentenced to death were represented ex officio lawyers during the preliminary investigation and in court of first instance.

In a complaint to the UN Human Rights Committee, Andrei Paluda, legal representative of death convict Siarhei Khmialeuski reported: *"The relatives of Siarhei Khmialeuski could not afford to hire a lawyer, therefore, one was appointed by the investigation authorities.*

Siarhei Khmialeuski had a right to consult legal counsel only during the first interrogation as a suspect, in violation of the Art. 45 par. 2 of the Code of Criminal Procedure that guarantees access to a lawyer from the moment of arrest.

As a result, Khmialeuski was thus denied access to a lawyer during 8 hours since his factual arrest and as a result, police officials exerted pressure on him and applied violence.

During the initial interrogation as a suspect, Khmialeuski was denied the right to a confidential meeting with a lawyer. As a result of unlawful methods used against Khmialeuski by law enforcement officers, his psychological and physical state did not allow him to think over his testimony and even to read the protocol given to him for signature by the investigator. The latter fact was documented in minutes stating that the protocol was read to Khmialeuski. The facts listed above reveal the violation of the right to legal defence that lead to self-incrimination."

A number of interviewees expressed to the FIDH-HRC "Viasna" mission their confidence that the prosecution systematically uses defendant's confession as the main evidence of guilt in court.

Furthermore, appointed counsel is changed frequently during the criminal prosecution of a case for reasons not explained to defendants. In the same complaint to the UN Human Rights Committee by the legal representative of Siarhei Khmialeuski, it is pointed out that his *ex officio* lawyer was replaced twice before the case was taken by a private attorney.

In certain situations, the mission found violations of the guarantee to assistance from an attorney whose experience and competence matches the nature of the violation and who is appointed to

77. FIDH-HRC "Viasna" mission interview with Andrei Kniazkou, former convict of a particularly grave crime, 29 June 2016.
78. "Subsidised legal aid in Belarus: current state of affairs, perspectives for development", http://www.lawtrend.org/wp-content/uploads/2014/12/Covremennoe-sostoyanie_DBPP.pdf, in Russian only.

provide effective legal assistance free of charge, if the accused person cannot afford a private attorney. The latter guarantees is enshrined in international laws.[79]

Legislation on death penalty application in Belarus

The scope of death eligible crimes has been reduced in 1999, the year of the adoption of the new Criminal Code that introduced life imprisonment as a second measure of exceptional punishment and as an alternative to death penalty. While the number of crimes punishable by death was reduced from 30 to 14, including two war-time crimes (Art. 122 and 135, see below), as explained in the book "Death penalty in Belarus", the humaneness of the Criminal Code in force should be carefully assessed. Instead of comparing the number of death eligible crimes in the Soviet and current Criminal Codes, one should analyze instead the most frequently applied articles, i.e. Art. 100 of the CC of 1960 and Art. 139, par. 2 of the CC of 1999.[80] Both provide for the use of the death penalty for murder with aggravating circumstances. Art. 100 of the Soviet-era Criminal Code contained eight paragraphs on aggravating circumstances, while Art. 139, Part 2 of the Criminal Code currently in force contains as many as 16 paragraphs. Researchers thus have long claimed that the current Criminal Code is stricter compared to the previous one.[81]

With the amendments to the Criminal Code dated 5 January 2016 No. 356-3 that included removal of Art. 365 par. 2 (state treason coupled with murder), the number of death eligible crimes was reduced to 13. However, the amendments should not be interpreted as an attempt to reduce the scope of the application of the death penalty crimes since the crime previously stipulated by the par. 2 of the Art. 365 is still punishable by death by the Art. 356 and Art. 139 par. 2.

Death eligible crimes

Unleashing of war and the conduct thereof (Art. 122, par. 2 of the CC)

Punishable by deprivation of liberty from 7 to 20 years, life imprisonment or death penalty. This law appears to address wars against other nations rather than wars against Belarus.

Murder of a representative of a foreign state or an international organisation (Art 124, par. 2 of the CC)

Murder of a representative of a foreign state or an international organisation for the purpose of destabilizing the world order or provoking a war is punishable by deprivation of liberty from 10 to 25 years, life imprisonment or death penalty.

International terrorism (Art. 126 par. 3 of the CC)

An act of terrorism described as explosion, arson, flooding and other acts susceptible to cause casualties or injuries, destruction or damage of buildings, structures, transport and communication routes and other property committed in a foreign state or on a foreign state territory within the Republic of Belarus for the purpose of provoking international tension, war or destabilization in a foreign country, murder, injury or property damage inflicted on a foreign state or public official for the purpose of international terrorism are punishable by deprivation of liberty from 10 to 25 years or life imprisonment or death if conducted:

79. "Basic principles on the role of lawyers", http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx.

80. Abolition of the Death Penalty in Belarus. Collection of scientific articles. p. 47, quoted from "Death penalty in Belarus," p. 53, https://spring96.org/files/book/en/2016-death-penalty-belarus-en.pdf.

81. Ibid. P. 32.

a) by an organized group or
b) with the use of nuclear, toxic, biological or chemical materials, or
c) caused death of a representative of a foreign state.

Together with the art. 128 on crimes against human security, the latter provision in the Criminal Code permits death penalty for a crime not resulting in death committed during peace-time.

Genocide (Art. 127 of the CC)

Punishable by deprivation of liberty from 10 to 25 years, life imprisonment or death penalty.

Crimes against human security (Art. 128 of the CC)

Deportation, illegal detention, enslavement, mass or systematic extra-judicial executions, abductions, followed by disappearance, torture, genocide and atrocities committed in relation to race, nationality, ethnicity, political beliefs or religious faith of the civilian population are all punishable by deprivation of liberty from 7 to 25 years, life imprisonment or death.

Use of weapons of mass destruction (Art. 134 of the CC)

Use of weapons of mass destruction banned on the territory of Belarus is punishable by deprivation of liberty from 10 to 25 years, life imprisonment or death penalty.

Violation of the laws and customs of war (Art. 135, par. 3 of the CC)

Willful homicide of persons protected by the international humanitarian law is punishable by deprivation of liberty from 8 to 25 years, life imprisonment or death penalty.

Murder (Art. 139 par. 2 of the CC)

Deliberate deprivation of life is punishable by deprivation of liberty from 6 to 15 years. The following aggravating circumstances inflict stricter punishment ranging from deprivation of liberty from 8 to 25 years, life imprisonment or death penalty:

1) Murder of two or more individuals;
2) Murder of a minor, provided the age was known to a defendant; murder of an elderly person or a person in a helpless state;
3) Murder of a woman who is known by a defendant to be pregnant;
4) Murder involving abduction or hostage taking;
5) Murder that may inflict danger or damage to the public;
6) Particularly cruel murder;
7) Murder involving rape or sexual violence;
8) Murder committed for the purpose of concealing another crime or facilitating its commission;
9) Murder committed for the purpose of obtaining the organs or body parts of the victim;
10) Murder of an individual or his relatives in connection with his public duty or the discharge thereof;
11) Murder of an individual or his relatives in connection with his or her refusal to partake in a crime;
12) Murder committed for material gain, out of mercenary motives, or involving violent robbery, extortion or banditry;
13) Murder for hooligan reasons;

14) Murder committed out of racial, national, religious hatred or enmity, or of hatred or enmity with respect to a particular social group;
15) Murder committed by a group of persons;
16) Murder committed by a person previously convicted of murder, except for those convicted for murder of an unborn child, murder in a state of affect, murder of a crime suspect and murder exceeding the defence limits.

It should be noted that while the provision above details the aggravating circumstances for homicide crimes, a separate article, Art. 64, lists circumstances that aggravate liability for any crime. While for the most part, it reiterates the situations discussed above, it includes several new ones (listed below) that, due to the vague wording of the Code, might allow a court to consider the latter situations as aggravating liability for homicide crimes as well.

Circumstances aggravating criminal liability (Art. 64 of the CC):

1) Murder committed by a person previously convicted of a crime, provided that the statute of limitations has not expired and conviction has not been quashed or removed. The court has a right not to consider the latter circumstance as aggravating;
2) Commission of a crime against an individual who is in a state of material, service or other dependence on the perpetrator;
3) Commission of a crime by an individual in violation of an oath taken by him or her;
4) Commission of a crime causing grave consequences;
5) Commission of a crime of a minor or a person suffering from a mental disorder, provided the age or the mental disease was known to a defendant;
6) Commission of a crime with the use of public calamity or a state of emergency;
7) Commission of a crime by negligence following a conscious violation of established safety rules;
8) Commission of a crime in a state of intoxication or in a state caused by consumption of narcotic drugs, psychotropic substances, their analogues, toxic or other intoxicating substances. Depending on the nature of the crime, the court may not recognise the latter fact as aggravating.

Circumstances attenuating criminal liability (Art. 63 of the CC):

1) Confession;
2) Sincere repentance for the crime committed;
3) Active assistance in investigating the crime, apprehending the accomplices and searching for illegally acquired property;
4) Provision of medical or other assistance to a victim immediately following the crime; voluntary compensation for damages, payment of proceeds obtained through criminal means, and elimination of harm caused by the crime; and other actions aimed at reparation for such harm;
5) Commission of a crime by an individual who has a minor child;
6) Commission of a crime due to a coincidence of grave personal, family, or other circumstances;
7) Commission of a crime under threat or coercion or owing to material, official, or other dependence;
8) Commission of a crime under the influence of the victim's illegal or amoral actions;
9) Commission of crime through a breach of lawful conditions for necessary urgency, acting among accomplices to a crime under special assignment, justified risk, or the execution of orders or instructions;
10) Commission of a crime by a pregnant woman;
11) Commission of a crime by an elderly person.

Terrorism (Art. 289, par. 3 of the CC)

An act of terrorism described as explosion, arson, flooding and other acts that may cause casualties or injuries or a danger thereof committed for the purpose of exerting pressure on the authorities in their decision making or with the purpose of impeding political or public activity, threatening the population or destabilising public order is punishable by deprivation of liberty from 8 to 15 years. Repeated acts of terrorism coupled with injuries or committed by a person previously convicted of certain crimes is punishable by deprivation of liberty from 8 to 20 years. Finally, an act of terrorism is punishable by deprivation of liberty from 10 to 25 years, life imprisonment or death if it is committed:

a) by an organized group,
b) with the use of nuclear, toxic, biological or chemical materials, or
c) if it resulted in death.

Illegal seizing of state power (Art. 357, par. 3 of the CC)

Conspiracy and acts aimed at seizing power using unconstitutional means are punishable by deprivation of liberty from 8 to 12 years. Illegal seizing and maintaining of power is punishable by deprivation of liberty from 10 to 15 years, if coupled with death or murder - 10 to 25 years of deprivation of liberty, life imprisonment or death.

Act of terrorism against a public figure or statesman (Art. 359, par. 2 of the CC)

Murder or attempted murder of a state or public official committed in connection with his or her public office aiming to destabilize public order, to exert pressure or to impede certain state decision-making, or to impede certain political or public activity or in revenge thereof is punishable by deprivation of liberty from 10 to 25 years, life imprisonment or death.

Diversion (Art. 360 par. 2 of the CC)

An act of explosion, arson, flooding and other acts susceptible to cause casualties or injuries or material damage to buildings or structures, transport and communication routes or other property with the purpose of inflicting damage to the country's economic independence or its security (diversion) is punishable by deprivation of liberty from 10 to 15 years, if committed by an organised group causing death or other grave consequences - by deprivation of liberty from 10 to 25 years, life imprisonment or death.

Murder of an internal affairs officer (Art. 362 of the CC)

Punishable by deprivation of liberty from 10 to 25 years, life imprisonment or death penalty.

* * *

An analysis of the articles in the Criminal Code determining criminal liability for crimes listed above reveals a remarkably large spectrum of sentences ranging from deprivation of liberty for seven years to the death penalty. The administration of a sentence is left at the discretion of a judge. Legal restrictions are only placed on a penalty type and minimum and maximum penalties. The Criminal Law Enforcement Code provides for the following principle of evidence evaluation based on a judge's inner conviction (Art. 19):

"1. Court and prosecutorial authority assess evidence guided by law and inner convictions that are based on comprehensive, full and impartial investigation of all circumstances of the criminal case. 2. No evidence is predetermined to pretrial investigation authorities, investigator, prosecutor or court."

The Plenum of the Supreme Court clarified: "Punishment is determined on the basis of court's assurance of punishment's necessity and sufficiency for the correction of an individual who committed a crime, for the prevention of new crimes by the convict and by other individuals and for restoration of social justice. Only a fair punishment will result in effective implementation of criminal liability."

Persons interviewed during the FIDH and HRC "Viasna" mission noted the lack of clear criteria in handing down death sentences.

Thus, Aleh Hulak, Chairman of the Belarusian Helsinki Committee, is of the opinion that *"The discretion left to the judge is too high. Sanction for murder with aggravating circumstances may vary from 8 years imprisonment to the death penalty and there are no criteria prescribed in legislation to be applied."* [82]

Palina Stsepanenka, a journalist and activist in the campaign against the death penalty, noted: *"The criteria used to choose from all the accused those who would be sort of "sacrificed," and thus executed, are not clear. The convicts who serve life sentences are not in any way "better" or "worse" in terms of the crimes committed. There are a number of cases where people who committed crimes, similar to those committed by death convicts, get life imprisonment."* [83]

82. FIDH-HRC "Viasna" mission interview with Aleh Hulak, 30 June 2016.

83. FIDH-HRC "Viasna" mission interview with Palina Stsepanenka , 27 June 2016.

II. VIOLATIONS OF RIGHTS RELATED TO THE APPLICATION OF DEATH PENALTY IN BELARUS

II.1. RIGHTS' VIOLATIONS DURING ARREST AND INVESTIGATION OF DEATH ELIGIBLE CRIMES

The risk of using torture and ill-treatment is particularly high during the arrest and the period that follows shortly thereafter, since law enforcement officials may coerce a statement or confession from an arrestee in order to justify the arrest, before he or she has had a chance to seek legal representation.

According to the Art. 45, par. 1 of the Code of Criminal Procedure, participation of a lawyer in all criminal proceedings is mandatory in criminal cases involving particularly grave crimes. If a person is suspected of committing a death eligible crime, legislation guarantees him the right to legal defence from the moment of factual arrest.

A crime suspect may be detained up to 12 hours prior to initiation of criminal proceedings against him, or released.

Preventive measure of restraint (most often – preventive detention) against a crime suspect must be applied during 72 hours following the factual arrest. Preventive measures of restraint against a person suspected of committing a particularly grave crime under Art. 124 par. 2, Art. 126, Art. 139 par. 2, Art. 285 par. 1, 2 and 3, Art. 286, Art. 289, Art. 357 par. 3, Art. 359, 360, 362, and Art. 339 par. 3 of the Criminal Code must be applied within 10 days from the factual arrest, or a suspect must be released.

According to Pavel Sapelka, *"In Belarus, contrary to international standards, detention merely on suspicion of committing a death eligible crime can last up to 10 days, whereas a recognised standard is 48 hours. Contrary to international standards, preventive measure of restraint – in Belarus, this would be preventive detention in most of the cases - may be imposed not only by a judge, but also by a prosecutor, chairman of the investigative committee and the chairman of the KGB (state security committee)."* [84]

Based on documents that formed the basis for the description of cases presented in this report, as well as based on the testimonies of persons interviewed by the FIDH-HRC "Viasna" mission, self-incrimination is extracted from suspects namely during the first 12 hours of detention. Moreover, as evidenced by the documents and testimonies on the case of Henadz Yakavitski, the detention report is drawn up several hours after the factual arrest. As the case of Siarhei Khmialeuski demonstrates, the legal rights were not explained to the suspect, including the right not to testify against himself, and not to testify in the absence of legal counsel.

It is noteworthy that in a number of cases presented in the report, legal counsel was not present during the initial interrogation by the police, as in the case of Henadz Yakavitski for example. In the case of Vladislav Kovalev (Uladzislau Kavaliou) and Dzmitry Kanavalau, lawyer was also absent

84. FIDH-HRC "Viasna" mission interview with Pavel Sapelka, 29 June 2016.

during the first interrogation, in violation of Belarusian law and in spite of the gravity of the charges against them and the wide coverage of the case (detailed description of the latter cases is below).

Torture and ill-treatment

As noted above, torture and ill-treatment are systemic problems in Belarus and are used not only in investigating death eligible crimes. The issue of torture in Belarus is raised by the non-governmental organisations and international actors who keep urging the Belarusian authorities to eradicate the problem. Interviews conducted by FIDH-HRC Viasna mission demonstrate that torture and ill-treatment are systematically used to extort self-incrimination shortly after the arrest.

Human rights defender Siarhei Sys noted that *"The analysis shows that in cases, where physical force is not applied, law enforcement applies psychological pressure, as for instance, a promise that in case of self-incrimination, a suspect merely risks serving several years in prison, and threats of a severe form of punishment in case of refusal to admit guilt."* [85]

In the case of Vladislav Kovalev (Uladzislau Kavaliou) and Dzmitry Kanavalau, physical force was used against them following their arrest. During a visit with his mother, Vladislav Kovalev (Uladzislau Kavaliou) told her that he was beaten to confess guilt and that he was subjected to physical and psychological pressure. Employees of the Main Directorate for Combating Organized Crime talked to him in the absence of a lawyer. As a result of the pressure, Mr. Kovalev made a confession, which later formed the basis for his conviction.

"Before the cross-interrogation of other defendant in the case, the investigator threatened Vladislav with the death penalty or life imprisonment if he changed his testimony during court hearings, and if he pled guilty, he would serve a limited imprisonment," the mother of Vladislav Kovalev (Uladzislau Kavaliou) reported to the FIDH-HRC "Viasna" mission.[86]

In court, Vladislav Kovalev (Uladzislau Kavaliou) withdrew his self-incrimination claiming it was extorted under pressure. He was executed within record time: less than 4 months following the entering into force of the court verdict.

The case of V. Kovalev is not an exception hereby confirming that torture and ill-treatment is systematically used in Belarus to force an admission of guilt and self-incrimination. As established by the UN Human Rights Committee in six cases on death application in Belarus, the latter violated its international commitment under Art. 7 of the ICCPR on the prohibition of torture. In these six cases the Committee established the violation of the right to life (cases of Vladislav Kovalev (Uladzislau Kavaliou), Pavel Selyun (Pavel Sialiun), Vasil Yuzepchuk , Andrei Zhuk, Andrei Burdyko (Andrei Burdyka) and Oleg Grishkovtsov (Aleh Hryshkautsou)) and concluded that physical and psychological torture had been used by law enforcement agents against the defendants to force them to make a confession that subsequently formed a basis for conviction.

Torture in death penalty cases in Belarus - Excerpts from the UN Human Rights Committee Views

In all cases listed below, the UN Human Rights Committee (HRC) established facts of torture and, subsequently, a violation of Art. 7 of the ICCPR. The UN HRC clarified that the State party

85. FIDH-HRC "Viasna" mission interview with Siarhei Sys, 27 June 2016.
86. FIDH-HRC "Viasna" mission interview with Lyubov Kovaleva, mother of the executed Vladislav Kovalev, 27 June 2016.

has not presented any information to demonstrate that it conducted any effective investigation into the torture allegations.

Lyubov Kovaleva (Liubou Kavaliova) vs. Belarus (Views adopted in 2012, Communication No. 2120/2011)

[...] Mr. Kovalev subsequently retracted his confession during the court hearings, claiming that he was innocent and had made self-incriminating statements under pressure. [...] the law enforcement authorities claimed that Mr. Kovalev's bodily injuries attested during the investigation (bruise marks on his head on the right temple and on the chin, bruises on his hands resulted from rigid blunt objects, as well as on his shoulders and knees) were sustained as a result of the force used in the course of the arrest operation. The authors claim, however, that no such force was used, since Mr. Kovalev was asleep when he was arrested. In substantiation of their argument that Mr. Kovalev had not sustained any bodily injuries during his arrest, the authors refer to a picture of him taken on 12 April 2011 following his arrest (part of the materials of the preliminary investigation), as well as to his videotaped testimony broadcasted on official television channels after his arrest, depicting him sitting on the floor of the apartment with his hands handcuffed behind his back. None of the injuries attested on 13 April 2011 by the forensic medical examination are visible either on the picture or on the videotape, which confirms the fact that Mr. Kovalev was subjected to pressure after his arrest, in violation of the prohibition of torture and his right not to be compelled to testify against himself or to confess guilt.

Svetlana Zhuk (Sviatlana Zhuk) vs. Belarus (Views adopted in 2013, Communication No. 1910/2009)

[...] Mr. Zhuk was subjected to physical and psychological pressure with the purpose of eliciting a confession of guilt and [...] that his confession served as a basis for his conviction. In this regard, the Committee recalls that, once a complaint about ill-treatment contrary to Art. 7 has been filed, a State party must investigate it promptly and impartially.

Pavel Selyun (Pavel Sialiun) vs. Belarus (Views adopted in 2015, Communication No. 2289/2013)

[...] The Committee notes the claims under Art. 7 of the Covenant that the author was beaten by several police officers and subjected to physical and psychological pressure to force him to confess guilt in a number of crimes. The Committee observes that those allegations have not been refuted by the State party.

Oleg Grishkovtsov (Aleh Hryshkautsou) vs. Belarus (Views adopted in 2015, Communication No. 2013/2010)

[...] The Committee notes the author's claims under articles 7 and 14 (3) (g) of the Covenant that he was subjected to physical and psychological pressure to force him to confess to a number of crimes and that his confession served subsequently as a basis for his conviction by the courts. [...] The Committee notes [...] clear signs that the author was tortured [...], and complaints by his mother [...] and the author himself in this connection, the State party has not presented any information to demonstrate that its authorities have conducted an effective investigation into those specific allegations.

Andrei Burdyko (Andrei Burdyka) vs. Belarus (Views adopted in 2015, Communication No. 2017/2010)

[...] The Committee notes the author's claims [...] that he was subjected to physical and psychological pressure to force him to confess guilt in a number of crimes and that his forced confessions served subsequently as a basis for the establishment of his guilt and his conviction by the courts. The Committee also notes that those allegations have not been refuted by the State party.

Lack of independence of the investigation

Suspects are often held by the same institution that is tasked with the investigation of the alleged crime and which is itself under pressure to 'deliver results'.

Contrary to other countries, the system of pretrial detention centers in Belarus is under control of the Ministry of Internal Affairs. Moreover, temporary detention facilities for suspects are managed by local internal affairs units whereas pretrial detention facilities are under the control of the Penitentiary Department of the Ministry of Internal Affairs.

Pavel Sapelka clarified to the mission: *"A person finds himself in a detention facility where police officers working on his case can "visit" him at any moment. They can come and conduct an interrogation, even at night. Not a procedural interrogation duly recorded, but an off the record "interrogation" in order to pressure the detainee to admit guilt."* [87]

Cases are investigated by an Investigative Committee controlled by the President. The Investigative Committee is also partly dependent on the police - several officers of the Ministry of Internal Affairs were transferred to leadership positions of the to-be-established Investigation Committee in 2011-2012. Moreover, the Investigation Committee recruits from the Police Academy of the Ministry of Internal Affairs of Belarus.

Lyubov Kovaleva (Liubou Kavaliova) shared with the mission: *"The head of the investigative group of the case was Deputy Prosecutor General Andrei Shved, and the prosecutor was another Deputy Prosecutor General who, one could say, sat in the same office with A. Shved. As a result, we have a situation when a prosecutor would not go against an investigator and a judge would not go against a prosecutor."* [88]

Denial of access to legal aid

Access to lawyer is not only a key safeguard for a fair trial, but also for the prevention of torture and ill-treatment.

As mentioned above, the law guarantees access to a lawyer from the very detention of a suspect in a death eligible crime. Participation of defence counsel in such cases is particularly important in all stages of criminal proceedings, particularly during the investigation and trial. As evidenced by the examples given above, however, the right of access to a lawyer to suspects of death eligible crimes is systematically violated by law enforcement bodies of Belarus.

---

87. FIDH-HRC "Viasna" mission interview with Pavel Sapelka, 29 June 2016.
88. FIDH-HRC "Viasna" mission interview with Lyubov Kovaleva, mother of the executed Vladislav Kovalev, 27 June 2016.

While legal counsel is absolutely vital in cases on death eligible crimes, the abuses vary from denial of access to a lawyer of defendant's choice, restriction to access to a lawyer during the pretrial investigation and trial, absence of lawyer during initial interrogations, replacing ex officio lawyers without giving proper explanation to the defendant or his family, absence of a lawyer during the majority of the investigative actions, such as cross-examinations and interrogations.

Furthermore, the violations to the right to legal defence are of a systemic character, as demonstrated in decisions issued by the UN Human Rights Committee. In five out of eight Views handed down so far by the UN Human Rights Committee on cases related to the imposition of death penalty in Belarus, suspects were confirmed to have been restricted in their rights to access to lawyer which resulted in an assessment of the proceeding a against the applicants as violating the standards of a fair trial.

As reported by Lyubov Kovaleva (Liubou Kavaliova), mother of Vladislav Kovalev (Uladzislau Kavaliou) executed in 2012, *"During the investigation, a lawyer was allowed to meet with my son only once. And during the trial, there were always obstacles: apart from one consultation in the pretrial detention centre, they could talk to each other only for a few minutes before the start of the hearing. During one hearing, Vlad requested a meeting with a lawyer to which the judge replied "during the break, and at the discretion of the convoy." The lawyer also had limited access to the case file, he was constantly told that a large number of victims wanted to consult the files and that the queue was long."* [89]

Violation of the right to access to legal defence in death penalty cases in Belarus - Excerpts from the UN Human Rights Committee Views

In all cases listed below, the UN Human Rights Committee established the violation of Art. 14 of the CCPR on the right to a fair trial.

Lyubov Kovaleva (Liubou Kavaliova) vs. Belarus (Views adopted in 2012, Communication No. 2120/2011)

[...] Mr. Kovalev was visited by his lawyer only once during the pretrial investigation [...] the confidentiality of their meetings was not respected [...], they did not have adequate time to prepare the defence and [...] the lawyer was denied access to him on several occasions. [...]. The Committee is of the view that the conditions, <...> in which Mr. Kovalev was assisted by his lawyer during the pretrial investigation and in the course of court proceedings adversely affected his possibilities to prepare his defence.

Svetlana Zhuk ((Sviatlana Zhuk) vs. Belarus (Views adopted in 2013, Communication No. 1910/2009)

[...] The Committee further notes the author's allegations that her son has only been allowed to see a lawyer for five minutes and has effectively been deprived of legal assistance during the initial phases of the investigative proceedings, and that he was forced to participate in investigative actions without legal advice, despite his requests for a lawyer, in violation of the domestic criminal proceedings. The Committee also notes that these allegations were not refuted by the State party.

89. FIDH-HRC "Viasna" mission interview with Lyubov Kovaleva, mother of the executed Vladislav Kovalev, 27 June 2016.

Pavel Selyun (Pavel Sialiun) vs. Belarus (Views adopted in 2015, Communication No. 2289/2013)

[...] The Committee further notes the author's allegation that, during the pretrial investigation stage, he was not afforded the effective and continued assistance of a lawyer, and that he was able to hire a privately retained lawyer only in the framework of the preparation of his cassation appeal. In this context, the Committee notes, for example, that, during more than six months of pretrial detention, the author did not have effective and continued access to his lawyers, and that the majority of the investigative actions, such as cross-examinations and interrogations, took place in the absence of a lawyer. The Committee also notes that these allegations have not been refuted by the State party.

Oleg Grishkovtsov (Aleh Hryshkautsou) vs. Belarus (Views adopted in 2015, Communication No. 2013/2010)

[...] The Committee notes the author's allegation that, during the investigation stage, the trial and the appeal procedures, he was not afforded assistance of a lawyer, in violation of his rights under Art. 14 (3) (d). The Committee notes, for example, that, during the five months of pretrial detention, the author did not have effective access to legal assistance, while during this period of time he confessed guilt under duress, and that, during the preparations for the cassation appeal, he was not allowed to meet with his lawyer privately.

Andrei Burdyko (Andrei Burdyka) vs. Belarus (Views adopted in 2015, Communication No. 2017/2010)

[...] The Committee notes the author's allegation that, during the pretrial investigation stage, <Andrei Burdyko (Andrei Burdyka)> was not afforded effective and continuous assistance of a lawyer, in violation of his rights under Art. 14 (3) (d). The Committee, for example, notes that, during the five-month pretrial detention, the author did not have effective access to legal assistance, while during this period of time he confessed guilt under duress, and that he was not allowed to meet with his lawyer privately.

"To visit his client for the first time, a lawyer must receive a notice from the investigator which is still commonly called "permission". The correspondence with the client is censored. If a lawyer comes to see his client when the investigators are "savaging" a suspect, let's say with questions, he cannot meet the client until they're done," [90] explained to the mission Pavel Sapelka.

II.2. TRIAL IN FIRST INSTANCE COURT

Lack of procedural guarantees in criminal proceedings of death eligible crimes

Under Art. 268 of the Code of Criminal Procedure, crimes punishable by death are being prosecuted in regional courts and in Minsk City Court. Moreover, under Art. 269, par. 2 of the same Code, the Supreme Court has the right to consider any case referred to it by the Prosecutor.

The Supreme Court of Belarus is the highest judicial authority and its verdicts are final: they take effect immediately after being pronounced, and they may not be appealed. A Supreme Court verdict

90. FIDH-HRC "Viasna" mission interview with Pavel Sapelka, 29 June 2016.

may be only reviewed on a supervisory basis to the Presiding Judge of the Supreme Court or the Prosecutor General. Such an appeal is not an effective means of defence, however, because it does not suspend the verdict's taking into effect. In other words, a death convict sentenced in Supreme Court may be executed without awaiting the supervisory review decision (the aforementioned officials may suspend the enforcement of the death verdict but are under no obligation to do so). Moreover, the supervisory review does not result in a new court hearing. In some cases persons sentenced to death by the Supreme Court have been executed within less than four months after the pronouncing of their sentence (as in the cases of Kovalev and Kanavalau, Marozau, Harbaty, and Danchanka).

Aleh Hulak, Chairman of the Belarusian Helsinki Committee, explained to the mission: *"The death penalty is imposed under the very same criminal proceedings as other penalties. In death penalty cases a judicial mistake is irreversible and yet there are no additional guarantees. The only real difference is that cases under articles stipulating the death penalty are heard by a regional court as the first instance court. In other words, a case cannot be heard by a district or city court as the first instance court. This is something of a guarantee, but it's important to know that if a case is heard by the Supreme Court, the accused person does not even have the right to appeal."* [91]

Under Art. 32 par. 3 of the Code of Criminal Procedure, court proceedings involving capital cases must involve a "collegial consideration," consisting of one judge and two People's assessors. The selection of People's assessors is a closed process. Candidates' lists are formed by respective district, city and regional executive committees for a term of five years from citizens who have the right to participate in elections, referenda and in voting on dismissal of deputies. Inclusion on the list of People's assessors is carried out only with the consent of the concerned citizens. They are subsequently approved by the respective regional or Minsk City Councils (in the case of the lists of district, city, regional and Minsk city court People's assessors). People's assessors of the Supreme Court are approved by the President.

The level of preparation and professionalism of the People's assessors is usually very low.

As Pavel Sapelka explains: *"The participation of People's assessors is just a mock participation of the people in administering justice. People's assessors are being selected by the executive authorities. It's a closed process."* [92]

"I call the People's assessors the "nodders," said Hary Pahaniayla, former judge and former lawyer, ironically, "they sit in court and nod or sleep ." [93]

Under Art. 354 of the CPC, the death penalty can only be handed down unanimously.

The lack of independence of judges

As Andrei Kniazkou, former convict sentenced for a particularly grave crime, reported "Judges only call witnesses listed in the investigator's document. Even if I or my lawyer filed a motion to call other witnesses, the court would not take this motion into account." [94]

---

91. FIDH-HRC "Viasna" mission interview Aleh Hulak, 30 June 2016.
92. FIDH-HRC "Viasna" mission interview with Pavel Sapelka, 29 June 2016.
93. FIDH-HRC "Viasna" mission interview with Hary Pahaniayla, 30 June 2016.
94. FIDH-HRC "Viasna" mission interview with Andrei Kniazkou, former convict of a particularly grave crime, 29 June 2016.

Motions by defence lawyers are rejected in the majority of cases. The trial of Dzmitry Kanavalau and Vladislav Kovalev (Uladzislau Kavaliou), both charged with a particularly grave crime - explosion in Minsk subway that resulted in a large number of victims - was supposed to answer all questions the victims had about the crime. Yet the judge seemed unwilling to find the truth. *"The judge had the same answer to any question from the defence attorneys: I am withdrawing the question. For example, my son's attorney filed a motion to investigate detention and ownership of a SIM card found in the apartment where the arrest was made. The motion was denied. The same thing happened with one of the victim's motions to question workers he saw in the subway station on the day preceding the explosion who were doing repair work. There was a wagon that the victims wanted to inspect, but the judge denied the motion. All the motions that could have provided answers to our questions were rejected."* [95]

"There are no guarantees for a trial to be fair and the principle of equality of arms does not exist," [96] - is of the opinion Pavel Sapelka.

The case of Aliaksandr Hrunou is a glaring example of the extent to which judicial decisions lack independence from the executive branch. The Supreme Court of Belarus overturned the death verdict of the Homieĺ Regional Court dated 24 December 2013 and ordered a retrial. However, immediately thereafter the President of Belarus, Aliaksandr Lukashenka demanded, during a meeting with Prosecutor General Aliaksandr Kaniuk, that law enforcement, supervisory and judicial authorities treat such criminals more harshly[97]. As a result of the retrial, the Homieĺ Regional Court handed down the very same sentence: capital punishment in the form of death by firing squad. A further cassation appeal by Aliaksandr Hrunou to the Supreme Court and a subsequent clemency plea to the president were predetermined and hence fruitless.

In general, the Belarusian society has a very low level of trust in the law enforcement and the judiciary. The results of an online poll on the website of the Supreme Court of the Republic of Belarus (the authors of the report took into account the low number of respondents and thus consider the poll as not fulfilling the criteria of representativity of all Belarusian society) on the topic of citizens' confidence or lack thereof in the judicial system showed that the respondents consider the courts in Belarus to be inefficient: less than eight percent fully trust courts and would appeal to a court to protect their rights.[98]

Aliaksandra Yakavitskaya, daughter of a sentenced prisoner on death row Henadz Yakavitski, (Henadz Yakavitski has already been sentenced to death in the past but the sentence was commuted to 15 years in prison), accounts: *"As far as the judicial process itself is concerned, I think it was a circus. I attended court hearings with my mother - we were in shock. The witnesses were in an inadequate state, they gave up to four different versions of their testimony. They didn't remember anything. Even the judge noted that their testimony was constantly changing. Roughly speaking, one is supposed to read the following meaning in between the lines of the court verdict: "There's no one else who could have committed the crime." There were many questions that were left unanswered. It could not be excluded that someone else could have entered the house where everything happened, since none of the witnesses could remember anything. A sweater belonging to an unknown person was found on the gate of the house. It had traces of blood on it that did not belong to my father, the witnesses, or the victim. Also, a blanket with traces of blood was found on the brazier. None of these objects were examined and no answers were ever provided to the questions of who they belonged to or how they ended up there."* [99]

95. FIDH-HRC "Viasna" mission interview with Lyubov Kovaleva, mother of the executed Vladislav Kovalev, 27 June 2016.
96. FIDH-HRC "Viasna" mission interview with Pavel Sapelka, 29 June 2016.
97. Lukashenka, speaking about the killer of a girl in Homiel: "What right do you have to live on this earth?" http://Homieltoday.by/rus/news/Homiel/47860/, in Russian only.
98. "Ludmila Kuchura: our judicial system makes us living in "a zone", http://spring96.org/ru/news/83222 in Russian only.
99. FIDH-HRC "Viasna" mission interview with Aliaksandra Yakavitskaya, daughter of convict on death row Henadz Yakavitskii, 29 June 2016.

The Case of Henadz Yakavitski

Henadz Yakavitski, who had previously committed murder, was arrested on 31 July 2015 on suspicion of a murder committed on 28 July 2015. During a quarrel Henadz Yakavitski hit Tatsiana Vitaliyeuna Apanasionak several times. Later he and the victim went into the next room, where he fell asleep. Due to severe intoxication, he does not recall what happened next. When he awoke, he found Apanasenok lying next to him on the sofa, dead, with a broken jaw and wearing no outer garments. He dressed her in her jeans that had bloodstains on it that had not been there before. He himself notified the police.

A defence attorney was provided to Henadz Yakavitski during the drafting of the arrest report that took place more than six hours after his factual arrest. For six hours, from the time he was actually arrested to the time the arrest report was drafted, investigators interrogated Yakavitski and subjected him to psychological pressure; the details of the interrogation were not officially recorded. Yakavitski was not given the opportunity to meet privately with his defence attorney without the investigator being present.

During hearings in the Minsk Regional Court, the confession Henadz Yakavitski made during the first hours of his arrest under pressure and without access to lawyer served as the main basis for his conviction. At the same time, throughout the trial Henadz Yakavitski did not admit to being guilty of a premeditated murder.

On 5 January 2016, the court sentenced Henadz Yakavitski to death. On 8 April 2016, a Supreme Court panel rejected Henadz Yakavitski's appeal and upheld the death sentence. Henadz Yakavitski is currently on death row in the Pretrial Detention Facility No. 1 in Minsk. In April 2016, he filed a clemency plea addressed to the President of the Republic of Belarus.

A representative of the Prosecutor's Office, Alena Dziamko, revealed her biased attitude toward the accused when she stated during the trial that Yakavitski was irredeemable. For his first conviction, Henadz Yakavitski had been sentenced to three years in prison at age 17 for stealing a bottle of wine from a passerby. This was followed by a series of convictions, including his first death sentence in 1989, which was later commuted to 15 years of imprisonment.

Yakavitski's lawyer pointed out to the court that a forensic examination had found traces of unidentified blood under the nails of the victim. The investigation did not even attempt to determine the identity of that person. In lawyer's opinion, capital punishment cannot be used in cases where a court failed to establish guilt beyond reasonable doubt and left many questions unanswered.

The mass media, taking its cue from state officials, cultivated negative public sentiments against Yakavitski and influenced attitudes toward this case. Before the hearing of the appeal in cassation, the court was subject to influence from the mass media, in which opinions were expressed about Yakavitski's guilt. Distorted or utterly inaccurate facts were published before the sentence took effect.

During the trial in the court of first instance, relatives of the victim stated that they opposed the use of the death penalty for Henadz Yakavitski yet the court did not take their arguments into account.

Negative consequences of the institute of the pretrial agreement on cooperation with the prosecution

Amendments to the Criminal Code and to the Code of Criminal Procedure introduced in 2014 (entered into effect in January 2015) the term "pretrial agreement on cooperation with the prosecution". In exchange for a commuted sentence, an accused may decide to assist investigators in the investigation of a crime and in exposing accomplices. Under Art. 69 (1) par. 2 of the Criminal Code, if the accused is charged with particularly grave crimes punishable by death, the death sentence is not applied if a pretrial agreement on cooperation is concluded.

The suspect is required to plead guilty, to specify the actions he intends to undertake to assist investigators and to expose accomplices, to return illegally acquired property, to compensate for property damage caused, and to report information known to him about other crimes and perpetrators. The last requirement is optional.

The final decision on the conclusion of the pretrial agreement on cooperation is left entirely to the discretion of the prosecutor. If the latter decides that the cooperation was insufficient, the accused shall be handed down a sentence irrespective of his cooperation with the investigators.

"The problem with the institute of the pretrial agreement is that many might choose self-incrimination in order to avoid death penalty. However, no guarantees are given to suspects as in the end all depends not on the court but on the decision of the prosecutor who decides whether the suspect cooperated well enough," [100] explained Pavel Sapelka.

So far, none of the persons accused of crimes punishable by death entered into a pretrial agreement on cooperation with the prosecution. Moreover, journalists and lawyers with whom FIDH-HRC "Viasna" met during the mission expressed their reservation concerning the new amendment to the Criminal Code and its potential consequences on death sentences.

In the opinion of journalist Adarya Gushtyn, *"The provision of the pretrial agreement and its emphasis on the exposure of accomplices are formulated in a way that renders it potentially applicable only in cases with crimes committed by an organised group. The impact of the amendment on the number of death sentences cannot be yet estimated since the provision has still not been applied in a case involving the death penalty".*[101]

Systemic violation of the presumption of innocence

The right to be presumed innocent until proven guilty in court is often being curtailed in Belarusian courts and is systemic in death penalty cases. In violation of the international standards on the presumption of innocence, people accused of death eligible crimes are brought to justice in a cage and in handcuffs. As another example, before the court verdict entered into effect in the case of Henadz Yakavitski, he was forced to wear prisoner clothing with an abbreviation of "Exceptional measure of punishment" (In Russian "ИМН") and in prison, a four-person convoy transferred him from and to his cell in a special position – with his body bent down so that his head was at the level of knees.

Public officials in Belarus often make public statements containing unambiguous acknowledgement of guilt of the accused ahead of the court verdict. Media publish accusatory articles, disclose

100. FIDH-HRC "Viasna" mission interview with Pavel Sapelka, 29 June 2016.

101. FIDH-HRC "Viasna" mission interview with Adarya Gushtyn, 28 June 2016.

investigative material and publish photos and video shots degrading to a person who has not been yet convicted.

Violation of the presumption of innocence in death penalty cases - Excerpts from UN Human Rights Committee Views

In all cases listed below, the UN Human Rights Committee established the violation of the presumption of innocence:

Lyubov Kovaleva (Liubou Kavaliova) vs. Belarus (Views adopted in 2012, Communication No. 2120/2011)

[...] The Committee [...] considers that the presumption of innocence of Mr. Kovalev [...] has been violated. Several State officials made public statements about Mr. Kovalev's guilt before his conviction by the court and mass media made available to the public at large materials of the preliminary investigation before the consideration of his case by the court. Moreover, he was kept in a metal cage throughout the court proceedings and the photographs of him behind metal bars in the court room were published in local print media.

Svetlana Zhuk (Sviatlana Zhuk) vs. Belarus (Views adopted in 2013, Communication No. 1910/2009)

[...] Several State officials made public statements about her son's <Andrei Zhuk> guilt before his conviction by the court and because mass media made materials of the preliminary investigation available to the public at large before the consideration of his case by the court. Moreover, he was kept in a metal cage throughout the court proceedings and the photographs of him behind metal bars in the courtroom were published in the local media.

Pavel Selyun (Pavel Sialiun) vs. Belarus (Views adopted in 2015, Communication No. 2289/2013)

[...] The Committee further notes the author's allegations that the principle of presumption of innocence was not respected in his case, because he was shackled and kept in a metal cage during the court hearings, and was forced to walk with his head close to his knees.

Oleg Grishkovtsov (Aleh Hryshkautsou) vs. Belarus (Views adopted in 2015, Communication No. 2013/2010)

[...] The Committee further notes the author's allegations that the principle of presumption of innocence was not respected in his case, because he was shackled and kept in a metal cage during the court hearings. Moreover, the photographs of him behind metal bars in the courtroom were published in the media.

Andrei Burdyko (Andrei Burdyka) vs. Belarus (Views adopted in 2015, Communication No. 2017/2010)

[...] The Committee [...] notes the author's allegations that the principle of presumption of innocence was not respected in his case, because he was shackled and kept in a metal cage during the court hearings. Moreover, the photographs of him behind metal bars in the court room were published in the mass media.

Wrongful convictions

One of the key arguments against the death penalty is that it cannot be reversed in case of a judicial error. Indeed, with the course of time, even indisputable convictions seem less obvious, new testimonies and evidence may emerge and in some cases the true perpetrator comes to light only many years after.

The Case of Ivan Famin: Executed for Another's Guilt[102]

In 1998, the mother of Ivan Famin, who had been sentenced to death, contacted Human Rights Center "Viasna," which was then still called "Viasna-96". She gave human rights defenders letters that her son had written on death row, which had made their way out through the "prison post", thereby evading censorship.

In one letter Ivan wrote that he had been convicted for a cruel murder of a taxi driver, which in fact he had not committed.

Ivan Famin's mother claimed that criminals had forced her son to take the blame for someone else's crime, or else they would kill Ivan's mother and sister.

In 1998, the case was submitted to the UN Human Rights Committee. The Committee began reviewing the appeal and informed the Ministry of Internal Affairs of Belarus that the case would be heard on the international level. Under clause 92 of the Committee's Rules of Procedure, a state must not carry out an execution before an appeal on the merits to UN Human Rights Committee has been considered. In spite of this, Ivan Famin was executed.

Human rights defenders learned more about the case of Ivan Famin in 2012 during shooting of the film "Left according to the verdict" ("Ubyl po prigovoru"). The activists of the campaign "Human Rights Defenders against the Death Penalty in Belarus" traveled to Berlin to interview Aleh Alkayeu, head of the Pretrial Detention Centre No. 1 in Minsk from 1996 to 2001. Campaign activists had with them the letters of Ivan Famin.

Aleh Alkayeu, who beside heading the Pretrial Detention Centre No. 1, was also in charge of the firing squad, said that he remembered Ivan Famin well. He also confirmed that Ivan Famin was executed for a murder he had not committed. *"Everyone there knew,"* said Alkayeu, *"that he had taken the blame for someone else's crime and incriminated himself during the investigation and in court."* And even though "everyone knew," Ivan Famin was executed.

The confession of the defendant should not preclude investigators from conducting all necessary investigative actions. Even in cases where the accused admits his guilt, the task of the court remains a full and impartial assessment of the collected evidence. In Belarus, however, courts seem to over-rely on confessions and do not conduct due evidence assessment. In such conditions, the possibility of executing an innocent person is highly probable.

The case of Mikhail Hladki, who was wrongly convicted of murdering his brother, is one of the best examples of a severe judicial error. In the end, Mikhail Hladki avoided death, but his case is a prime example of what happens when the Belarusian judicial system issues sentences based on false confessions that are not properly investigated.

102. Based on the materials http://dp.spring96.org/ru/news/71152, in Russian only.

The Case of Mikhail Hladki

On 13 March 2003, Mikhail Hladki was sentenced by the Court of Minsk District and Zaslaŭje to 8 years in a strict-security penitentiary for murdering his brother, Viktor Hladki.

On 10 October 2002, Mikhail Hladki came to see his mother who was living with Mikhail's brother, Viktor Hladki. The latter had recently been released from prison. According to Mikhail Hladki's testimony, he found his mother dead and his brother sleeping. Because Viktar Hladki had beaten his mother on more than one occasion in the past, Mikhail Hladki figured that he had killed her. In a highly emotional state, he grabbed an axe and struck his recumbent brother several blows to the head. He later called the police and emergency services.

The court and the investigation paid no attention to serious inconsistencies in Hladki's testimony. Moreover, witnesses testified that they had seen a man come to the house on the day of the murder (this was Eduard Lykau, as it later turned out), but this event, too, was insufficiently examined. The origin of the words "Kill me" written on the mirror over the vanity table remained unknown.

Mikhail fully admitted his guilt in court, served 5 years in the penitentiary and spent a year and seven months performing correctional labor.

The real killer of both, Hladki's brother and mother, Eduard Lykau, was arrested in 2011 on suspicion of having murdered Mikalai Hryharenka. During the investigation, after meeting with a Catholic priest and sincerely repenting, he confessed to having murdered four other people, including his first murders – Mikhail Hladki's mother and brother in 2002. Their murder took place less than 24 hours before Mikhail Hladki was to visit his mother, on 9 October. In spite of Lykau's confession and cooperation with the investigation that resulted in exoneration of an innocent man and investigation of two more murders, Eduard Lykau was sentenced to death in November 2013 and executed.

Since 2014, Mikhail Hladki has been trying in vain to obtain a compensation for material and moral damages of unlawful punishment. He has been refused thereof for having "voluntarily incriminated himself." His efforts to bring those responsible for his wrongful conviction brought no result as well. All level courts up to the Supreme Court and the Investigative Committee and the Prosecutor General had refused to initiate disciplinary procedures against the officials who deemed the confessions of the accused sufficient to decide the criminal case in court.

The Maščanica Case[103]

On the night of 31 May to 1 June 2005, a family of six, among them two small children, was murdered in the village of Vialikaja Maščanica, in the Bialyničy District. Two days later, five young men ranging in age from 18 to 24 years old, from the same village, were arrested and charged with murder. The investigation of the case lasted nearly a year and a half, the trial took place in the Mahilioŭ Regional Court under Presiding Judge Mikhail Melnikau. The prosecutor requested capital punishment – execution by shooting – for two of the accused, and life imprisonment for the other three.

103. "The Maščanica Case: How Innocent People Were Almost Executed," http://spring96.org/ru/news/43706, in Russian only.

More than two years later, however, on 2 November 2007, the judicial panel of the Mahilioŭ Regional Court acquitted all five men due to failure to prove guilt. One of the defendants, Aliaksandr Klepcha, was released from custody in the courtroom, while the other four were sentenced to prison terms ranging from 4 years to 10 years and 2 months for other offenses: theft, sexual relations with minors, attempted rape, and hooliganism. The verdict was upheld in Supreme Court.

In 2008, three convicts in the "Maščanica case" were released: Henadz Salauyou and Siarhei Yushkevich were released under an amnesty in late May 2008, and Mikalai Rakutsin was released early on parole from the Veina Penitentiary on 26 September 2008. By 2011, only Pavel Pauliuchenka, the last of the former defendants in the murder case, who pursuant to the court's decision received a term of ten years and two months for a number of offenses, remained in detention.

This case received high public visibility. In Autumn 2008, human rights organisation Amnesty International met with the accused who had almost been executed for a crime that they did not commit. Stories of the accused about the abuses and degrading treatment that they had been forced to endure during their detention were documented and confirmed in cross-examination by the mother of the former suspects and the grandmother of Pavel Pauliuchenka.

The question of who committed this terrible crime remains unanswered.

The Vitsiebsk and Mazyr Cases

As far back as the 1980s, two sensational cases demonstrated the high probability of a wrongful conviction and just how irreversible it is when it leads to execution.

In 1971, women began to go missing in the Polatsk District of the Vitsiebsk Region and in the adjacent rural area. They were later found strangled. These crimes led women living in rural areas to refuse to go out in the evening. The real killer, Henadz Mikhasevich, was arrested only in 1985. By then he had killed at least 36 women. Fourteen innocent people were convicted for crimes they had not committed: one of them was executed, one went blind in prison, two spent fifteen years in detention, one served a ten year prison sentence, while the real murderer went on to kill again and again.

Each suspect was found guilty according to the same pattern: the suspect would be detained for several days, supposedly for hooliganism. Meanwhile investigators used physical and psychological torture to extract a confession, on which they then built an accusation. The accused frequently renounced their initial confessions in court, but their testimony did nothing to change the course of the investigation of the case. Moreover, suspects who did not admit their guilt, even under torture, were also sentenced to lengthy prison terms, despite an absence of material and other evidence.

Mechyslau Hryb, Director of the Internal Affairs Directorate of the Vitsiebsk Regional Executive Committee, who headed the investigation in the case of Henadz Mikhasevich in 1985, named in his book two reasons for such a protracted search of the real criminal: "corruption and very strict demands on investigators to solve criminal cases at any cost." It is worth noting that the very investigators who found the real murderer "fell into disfavour with higher authorities. As if they were guilty of having uncovered all the violations committed by

law enforcement and had cast doubt on the authority of their own ministry," wrote Mechyslau Hryb. He hinted that it would have been better for them if Henadz Mikhasevich had died before the trial, for example, while attempting a prison break. But the case went to court and the offender was executed. None of those who participated in the successful investigation of his crimes received an award for their work.[104]

Citizens of what was still the USSR learned of the Mazyr case from Mikalai Matukouski article "Shadow of Error," published in the newspaper Izvestiia. In summer 1981 the corpses of a Mazyr District fishing inspector and of a local investigator were found in a lake in the Homieĺ Region. Charges were brought against five suspects, who had been engaged in poaching activities in the district. There was no direct evidence of their involvement in the crime. In spite of that, the Public Prosecutor of the Republic asked for all five of the accused to be handed down the death penalty. Several witnesses, including Mikalai Ihnatovich, a future people's deputy and First Prosecutor of the independent Republic of Belarus, who called for the case to be closed for lack of evidence, were removed from the case. In April 1982, the accused were sentenced to lengthy prison terms. They avoided the death penalty by confessing to the crime they did not commit. Physical force had been used repeatedly on the accused during the investigation.

The real murderers were found two years later. The investigators who fabricated the case against the five poachers were never held to account.

II.3. JUDICIAL REVIEW OF DEATH SENTENCES

Review of a sentence issued by the Minsk City or Regional courts as first instance courts

Death sentences issued by the Minsk City Court or regional courts as first instance courts may be appealed with the Supreme Court. According to Art. 383 par. 3 of the Code of Criminal Procedure, death convict and his defence attorney participate in the hearing of the criminal case in appeal.

The appeal court rarely commutes death sentences issued by first instance courts. As demonstrated by the case of Siarhei Khmialeuski, the appeal court may even hand down a harsher verdict. A first instance court sentenced him to life imprisonment, but the Supreme Court overturned this sentence and returned the case for retrial by the same first instance court. As a result of the retrial, Siarhei Khmialeuski was sentenced to death.

The Case of Siarhei Khmialeuski

On 19 August 2015, the Minsk Regional Court found Siarhei Khmialeuski (previously convicted of murder) guilty of the premeditated murder of two people with particular cruelty and murder out of negligence of a witness thereof. He was also found guilty of repeated premeditated embezzlement, deliberate failure to comply with the requirements of preventive supervision, attempted premeditated destruction of property on a large scale, committed in a manner dangerous to the public, and of arson.

The prosecutor asked that the accused be sentenced to capital punishment, but the court instead sentenced him to life imprisonment. The Supreme Court overturned the life sentence

104. Grib, M.I. Belarusian Bridge: History, Facts, Events. Pg. 49. Cited in the book "The Death Penalty in Belarus," p. 30, https://www.fidh.org/IMG/pdf/knyga_en_web_1_.pdf.

and ordered a retrial of the case. In retrial, the charges were brought by the same state prosecutor who had previously deemed the sentence of life imprisonment too lenient and whose objection was upheld by the Supreme Court of the Republic of Belarus. As a result of the retrial, Siarhei Khmialeuski was sentenced to execution by shooting.

The retrial verdict was predetermined by the ruling of the Supreme Court, which stated, "since Khmialeuski has been proven guilty of the crime, <...> the sentence of life imprisonment that was imposed is clearly unjust owing to its leniency"; this clearly can be interpreted as a direct order to impose capital punishment in retrial.

The court set itself a goal of conducting the retrial as quickly as possible. Having reclassified the third murder from "murder by negligence" to "premeditated murder, in order to conceal the previous murders", the court handed down a death verdict without looking deeply into the circumstances or taking into consideration Khmialeuski's own partial disavowal of guilt.

The retrial of the criminal case was assigned to judge S.A. Yepikhau, who one month earlier had handed down the death sentence to Henadz Yakavitski.

The case of Siarhei Khmialeuski is revealing in the sense that the Supreme Court of the Republic of Belarus, having predetermined the outcome of the case in the second trial, rendered the appeal stage meaningless.

Furthermore, for about eight hours from the actual arrest of Siarhei Khmialeuski on 19 August 2015, no defence attorney was provided. This made possible a situation in which officers pressured him, used force, and inflicted physical injuries, as a result of which Khmialeuski incriminated himself. Contrary to Belarusian law, during the initial interrogation Khmialeuski was not given the opportunity to meet privately with a defence attorney. Khmialeuski testified that he was subject to torture and other unlawful methods of persuasion, which as a result led to his false confession. His claims were not investigated.

Siarhei Khmialeuski has filed a clemency plea addressed to the President of the Republic of Belarus. If it is denied, he will learn only seconds before his execution.

Before the death verdict entered into force, Siarhei Khmialeuski was forced to wear a prison uniform with a label on the back saying "EMP - Exceptional Measure of Punishment" and a four-man escort led him around like a death-row inmate, in a special pose, hunched toward the ground, "head to knees," in which his head is lower than his waist.

Review of a sentence issued by the Supreme Court as the first instance court

Sentences issued by the Supreme Court as the first instance court cannot be appealed. They can only be reviewed by the Chairman of the Supreme Court, his deputy, the Prosecutor General, or his deputy. If the latter find that there are grounds to protest the verdict, the Presidium of the Supreme Court shall reconsider the case.

Pavel Sapelka notes that *"Cases that the government wants to end quickly are heard by the Supreme Court. This relates to cases that resonate, like the cases of Kovalev and Kanavalau."* [105] Obviously, there might be various reasons for the investigation and prosecution to hurry closing a criminal case.

105. FIDH-HRC "Viasna" mission interview with Pavel Sapelka, 29 June 2016.

The Case of the Marozau Gang

An organized criminal group known as the Marozau Gang terrorized the Homieĺ Region for over 15 years. A unique document – a special ruling by the Supreme Court on the criminal case of Marozau and his accomplices sent to the Prosecutor General and the Minister of Internal Affairs - states the following reasons for such a long period of impunity:

1) The corruption of individual law enforcement officials in the Homieĺ Region, including top officials of the Internal Affairs Directorate, and their participation in criminal organisations;
2) A lack of proper coordination of actions among the services of the Internal Affairs Directorate of the Homieĺ Regional Executive Committee and the inefficacy of their work;
3) Improper prosecutorial supervision of preliminary investigations conducted by law enforcement and that of investigation conducted by the prosecutor's office;
4) Ties between criminal organisations and civil servants not disclosed or suppressed." [106]

The Supreme Court handed down the first sentence in the case of the gang on 1 December 2006. For a variety of grave and especially grave offenses, three leaders of the gang – Siarhei Marozau, Valerii Harbaty and Ihar Danchanka – were sentenced to capital punishment (execution by shooting). The remaining members of the gang were sentenced to various prison terms – from 2 to 20 years of imprisonment. A total of 46 people were targeted in the case of this criminal organisation.

On 9 October 2007, the judicial panel for Criminal Cases of the Supreme Court of Belarus pronounced a sentence in another criminal case against the members of the gang. In the latter trial, Marozau and Danchanka were again sentenced to death.[107]

The public learned about the execution of Marozau, Harbaty and Danchanka in early February 2008. The execution took place in spite of the fact that Marozau was a defendant in two other criminal cases that were brought to the Supreme Court in January 2008.[108] It was only on 11 March 2009 that is became known that pending criminal cases against Marozau had been "dismissed in connection with his death."[109]

It should be noted that one of the Homieĺ lawyers who participated in the trial in the case of the "Marozau gang" reported that Marozau had been recalling new criminal episodes and promising to name high-ranking officials at regional and national levels who had helped the gang avoid punishment for so long.[110]

Analysts believe that this is what hastened Marozau's execution.

106. "Secrets of the Marozau Gang Are Taken to the Grave," http://naviny.by/rubrics/disaster/2015/05/06/ic_articles_124_188822, in Russian only.
107. "The leader of the "Marozau Gang" and His Accomplice Are Sentenced to Death by Shooting," http://naviny.by/rubrics/disaster/2007/10/09/ic_articles_124_153247/, in Russian only.
108. "Three "Marozau People" Are Executed," http://naviny.by/rubrics/disaster/2008/02/05/ic_articles_124_155366/, in Russian only.
109. "Supreme Court Hands Down Sentence to Three More "Marozau People,"http://naviny.by/rubrics/disaster/2008/03/11/ic_news_124_287248/, in Russian only.
110. "Three "Marozau People" Are Executed," http://naviny.by/rubrics/disaster/2008/02/05/ic_articles_124_155366/, in Russian only.

In the case of Vladislav Kovalev (Uladzislau Kavaliou) and Dzmitry Kanavalau, the Supreme Court death verdict could not be appealed. However, a flagrant violation was their execution while the attorney of Vladislav Kovalev (Uladzislau Kavaliou) was preparing a supervisory appeal and the Presidium of the Supreme Court was duly notified thereof.

"Submission of a supervisory appeal in cases where an appeal in court is not possible does not suspend the enforcement of the verdict. Despite this fact, the Belarusian authorities continue to claim to the UN Human Rights Committee that a supervisory review is an efficient means of legal defence," [111] said Pavel Sapelka.

The official reply from the Supreme Court of the Republic of Belarus to the supervisory appeal submitted by the attorney of Vladislav Kovalev (Uladzislau Kavaliou) was eventually received by Lyubov Kovaleva (Liubou Kavaliova) on 23 November 2012, more than seven months after the execution of her son in March 2012. It upheld the death sentence.

The Case of Vladislav Kovalev (Uladzislau Kavaliou) and Dzmitry Kanavalau

The high-profile case of Dzmitry Kanavalau and Vladislav Kovalev (Uladzislau Kavaliou), like litmus paper, exposed all the shortcomings of the Belarusian judicial system.

Accused of a series of explosions in Minsk and Vitsiebsk in 2005-2011, including an explosion in the Minsk subway on 11 April 2011 that resulted in death of 15 people, Dzmitry Kanavalau and Vladislav Kovalev (Uladzislau Kavaliou) were sentenced to death on 30 November 2011 by the Supreme Court, which found they "represented an exceptional danger to society."

Kanavalau was found guilty of malicious and especially malicious hooliganism; premeditated destruction of property; unlawful acquisition, storage and transportation of explosive substances and explosive devices; and terrorism coupled with murder. Kovalev was found guilty of malicious and especially malicious hooliganism, premeditated destruction of property, unlawful acquisition, storage and transportation of explosive substances and explosive devices, failure to report an especially grave crime in the making, and complicity in terrorism.

The prosecution rested entirely on Dzmitry Kanavalau's confession. In the beginning of the trial, a recorded video interrogation was shown in which he confesses to committing a terrorist act (he refused to testify in court). In the video, Kanavalau briefly relates that he arrived in Minsk on 10 April 2011 with a large bag holding a bomb, the following day went down to the subway, rode as far as the "October" station, placed the bag next to a seat and pushed a button. According to his testimony, he had manufactured the bomb himself in his apartment in Vitsiebsk .

Vladislav Kovalev (Uladzislau Kavaliou) testified in court that during the preliminary investigation he had incriminated himself under pressure.

Human rights defenders, journalists and the public noted serious procedural violations during the pretrial investigation and during court proceedings. Claims of the accused about the physical and psychological pressure used on them during the preliminary investigation

111. FIDH-HRC "Viasna" mission interview with Pavel Sapelka, 29 June 2016.

were not properly investigated. The right to defence was severely restricted. The majority of defence motions were unjustifiably denied and as a result, inaccuracies and contradictions related to the evidence were not clarified. The presiding judge refused to summon to court either subway employees or a certain Kudrin, who on the Internet claimed responsibility for the terrorist act, or the special forces operatives who had arrested Kanavalau and Kovalev. The trial was abruptly and unexpectedly declared concluded.

The authors of Vladislav Kovalev (Uladzislau Kavaliou) individual appeal to the UN Human Rights Committee convincingly demonstrated the evidence of the use of torture against Vladislav Kovalev (Uladzislau Kavaliou).

On the last day of the trial, Kovalev's (Kavaliou) lawyer Stanislav Abrazey requested a repeated screening of the videotape extracted from the subway surveillance cameras showing silhouettes of two people with a large bag in their arms. The motion was denied. The investigators claimed that namely the latter videotape allowed identifying and arresting Kovalev and Kanavalau. However, the arrest took place on 12 April 2011, whereas the extraction of the videotapes took place on 19 April 2011. A photomodel of the criminals were in fact drawn when Kovalev and Kanavalau were already in the pretrial detention facility.

On 13 April 2011, i.e., the day after the arrest, President Aliaksandr Lukashenka announced that the terrorist attack had been solved. A month before the pronouncement of the sentence, on 31 October 2011, the President bestowed national awards for the investigating the terrorist attack in the Minsk subway. In violations of the presumption of innocence, statements on Kovalev (Kavaliou) and Kanavalau's guilt were widely broadcast by state media.

Dzmitry Kanavalau and Vladislav Kovalev (Uladzislau Kavaliou) were executed in March 2012, even though the UN Human Rights Committee had registered the appeal submitted by Vladislav Kovalev (Uladzislau Kavaliou)'s mother. The Belarusian authorities disregarded the official request addressed to them by the Committee demanding not to proceed with the execution before the Committee had considered the complaint. In November 2012, the Committee declared that Belarus had violated Vladislav Kovalev (Uladzislau Kavaliou)'s right to life.

During the trial, several victims expressed doubt that Kanavalau and Kovalev (Kavaliou) had been involved in the terrorist incident while tens of thousand of Belarusians signed a petition against sentencing Kovalev and Kanavalau to death. The public outcry at the death sentence was reflected in the nationwide survey conducted by the Independent Institute of Socio-Economic and Political Studies (IISEPS) in September 2011, as cited in the Introduction.[112] The sociological data attest: only 21.2% of respondents believed that the crime was committed by "a lone terrorist and his accomplice, with no one behind them." A further 32.4% of Belarusians believe that Kanavalau and Kovalev (Kavaliou) were involved in the explosion in the metro, but on someone else's instruction. And finally, 36.7% believe that the terrorist act was not committed by Kovalev (Kavaliou) and Kanavalau.

112. "Execution 'at His Own Request,'" http://gazetaby.com/cont/print_rdn.php?sn_nid=41042, in Russian only.

II.4. PRESIDENTIAL PARDON AND COMMUTATION TO LIFE IMPRISONMENT OR ANOTHER FORM OF PUNISHMENT

Pursuant to Art. 59 of the Criminal Code, the death penalty may be commuted to life imprisonment in court or through pardon provided for in the Presidential Order No. 250 of 3 December 1994.

After an appeal of a death sentence is rejected in Supreme Court, legislation provides for a presidential pardon procedure that in practice constitutes an illusionary chance for mercy. The Pardon Commission automatically reviews all death penalty cases regardless of whether or not the convict submitted a clemency plea. Thus, theoretically, the death sentence of a convict who did not petition for a pardon may be commuted to life imprisonment.

The decision not to grant a pardon is kept secret from the death convict, his attorney, and his relatives until the very execution.

Order No. 250 (as amended by Order of the President of the Republic of Belarus of 11.01.2014 No. 17) establishes the procedures for the work of the Presidential Pardon Commission.

The current members of this Commission are:

Mitskevich, Valery Vatslavavich – deputy head of the Administration of the President of Belarus (chair of the Commission);
Kolos, Dzianis Heorhiyevich – head of the Main Department for Cooperation with Legislative and Judicial Bodies on Matters of Citizenship and Pardon of the Administration of the President of the Republic of Belarus (deputy chair of the Commission);
Maroz, Liliya Frantsauna – chair of the Standing Commission of the Council of the Republic of the National Assembly of the Republic of Belarus on Legislation and State-Building (deputy chair of the Commission);
Barkou, Aliaksandr Uladzimiravich – deputy director for research and methodology, Institute for the Advanced Professional Training of Judges, Prosecutors, and Legal Professionals of the Belarussian State University;
Rabtsau, Leanid Mikhailavich – Constitutional Court judge;
Mikhalkova, Ludmila Stsiapanauna – chair of the Standing Commission on Legislation of the House of Representatives of the National Assembly of the Republic of Belarus;
Chaichyts, Viktar Ivanavich – chair of the National Bar Association.

The Commission also includes the chair of the Supreme Court, the Prosecutor General, the head of the Investigative Committee, the Minister of Internal Affairs, the Minister of Justice, and the head of the KGB. Where the participation of one of the latter individuals is not possible, deputies thereof ensure the replacement. [113].

As Pavel Sapelka noted in an interview with the mission, *"All members of the commission are professional jurists; many are former judges. And this predetermines how petitions for pardon will be considered. They are considered by jurists as a legal problem, whereas the Commission should be guided by the principles of humanism. Why then don't social figures, philosophers, writers, historians, musicians and poets participate in its work?"* [114]

113. Order of the President of the Republic of Belarus of 03.12.1994 No. 250 "On the Approval of Regulations on Procedures in the Republic of Belarus for Pardoning Convicts and Releasing Individuals Helping to Solve a Crime and Eliminate the Consequences of a Crime from Criminal Liability." Text of this legal act with amendments and additions of 1 January 2014: http://pravo.newsby.org/belarus/ukaz4/uk528.htm, in Russian only.

114. FIDH-HRC "Viasna" mission interview with Pavel Sapelka, 29 June 2016.

The Commission's work is just as opaque as the work of other state bodies in Belarus. The format of their decisions is unknown, and the decisions are not published: "Commission decisions on petitions for pardon are adopted by a simple majority of votes by members present, are entered into the minutes, and signed by the members." It can be assumed that the decisions do not even have a specific blank for providing justification for granting or rejecting a pardon. Legislative acts regulating the decision making within the Commission are not public either.

Representatives of the Belarusian Helsinki Committee (BHC) have noted that access to the Commission's work is extremely limited. On several occasions, the BHC has requested to be included in Commission's work, yet all their requests were so far rejected:

"We have contacted the Presidential Pardon Commission three or four times in recent years with a request to be included in the Commission, since the Presidential Decree does provide for inclusion of civil society Commission's work. However, each time we received the response that we would be summoned if necessary," Aleh Hulak, BHC chair, explained to the mission.

Art. 24 of the "Regulations on the Procedures for Granting a Pardon" states that "Information about the Commission's work and the decision of the head of state on pardoning convicts shall be regularly made public in the media". Yet the latter provision is not being brought into effect.

The website of the Ministry of Internal Affairs cites statistics on commutation of death sentences in 1998-2010:[115]

Year	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
No. of convicts in detention whose death sentence was commuted to life imprisonment	32	27	24	20	18	5	5	6	5	4	3	3	4

These cases seem to refer to reversals of death sentences in courts and not under presidential pardon. For example, in the period 1998-2000, a number of sentences were reversed in courts in connection with the introduction of the new Criminal Code in 1999.

The BELTA News Agency quotes Dzmitry Savatsimau, head of the Life Imprisonment Department, as citing two cases he is aware of when death penalty was commuted to life imprisonment: "Since Belarus introduced life imprisonment, the sentences of two death convicts were commuted to life sentence. Their psychological state changed dramatically. They were in seventh heaven from happiness, from getting a chance. For them their current life is very good, much better than death, and they openly admit it," he said.[116]

The Baranovichi news portal Intex-press.by quotes the MP Mikalai Samaseika who provided different information:

"Over the past 20 years, the President of Belarus pardoned a death convict only once. As stated to the Inter-press reported by Mikalai Samaseika, chair of the Standing Commission on Legislation and Legal Issues of the House of Representatives of the National Assembly of Belarus, it occurred

115. "Use of the Death Penalty," http://mvd.gov.by/main.aspx?guid=9091 , in Russian only.

116. "Sentenced to live", http://www.b-info.by/news/15133/index7.html, in Russian only.

in 1999: a livestock specialist at an agricultural enterprise convicted of murder out of jealousy faced execution. His death sentence was commuted to life imprisonment".[117]

The portal http://naviny.by/ asserts that "Over the 17 years of President Lukashenka's presidency, only one death convict was granted Presidential pardon. His death penalty was commuted to 20 years imprisonment. It occurred in 1996." [118]

The secrecy surrounding the issue of the death penalty is also applicable for pardon and commutation. In 1998, HRC "Viasna" received a letter from the prisoner Siarhei Pratsirayeu stating that he had been sentenced to death. Communication with him was lost until he made contact again in 2001, when he reported from the Penal Colony No. 13 in Hlubokaye that his death sentence had been commuted to life imprisonment. According to available information, he was transferred to Correctional Colony No. 5 in Ivantsevichi. There is no official information available whether his death sentence was commuted as a result of a pardon, nor about the reasons for the decision.

The case of Siarhei Pratsirayeu also demonstrates the scale of work conducted by human rights defenders not only to abolish the death penalty, but also to provide society with access to information on death penalty. Since 2009, when the campaign of "Human rights defenders against the death penalty in Belarus" was launched, activists' work to expose possible death penalty cases and to uncover violations of the rights of convicts and their relatives have raised awareness of the society.

The case of Dzmitry Kharkhel

Upon the request of the Belarusian authorities, Dzmitry Kharkhel, born in 1970 and previously convicted, was arrested on 17 September 1997 in Saint Petersburg (Russia) under charges of theft and other crimes committed in Belarus. On 18 September 1997 he was transferred to Minsk. On 21 April 1999, he was sentenced by the Minsk city court to 13 years in prison for theft and murder attempt. On 20 March 2002, the same court found him guilty of two murders, committed in Minsk on 3 November 1994, and for misappropriation of property belonging to the victim that included a car, jewelry and other objects and condemned him to death. On 30 August 2002, the Supreme Court of Belarus confirmed the death sentence.

The investigation of Dzmitry Kharkhel case lasted almost six years, the case was several times sent for additional investigation. In the meantime, human rights defenders submitted an individual complaint to the UN Human Rights Committee.

In 2003, the Supreme Court commuted his sentence to 15 years in prison.[119] Euroradio journalist who visited the penitentiary colony where Dmirti Kharkhel served his sentence was told in 2013 that Dzmitry was pardoned after serving 14 years and released one year ahead of his term. He gave the following comment to the Euroradio journalist regarding the commutation of his death sentence: "The Belarusian authorities made such a decision...I am not aware of how exactly they came to such a decision, I can only tell facts... The court simply commuted my sentence."

117. "Life imprisonment", http://www.intex-press.by/ru/895/incidents/9506/?tpl=13, in Russian only.

118. "Over the past five years, at least 14 people have been executed in Belarus", http://naviny.by/rubrics/society/2012/03/17/ic_articles_116_177209, in Russian only.

119. "Death penalty does not deter or scare anyone", http://euroradio.fm/ru/pomilovannyy-smertnik-smertnaya-kazn-nikogo-ne-pugaet-i-ne-ostanavlivaet "Death penalty does not deter or scare anyone", in Russian only.

II.5. DEATH PENALTY AND MENTAL DISORDER

Art. 92 of the Criminal Code provides for conditions for commuting sentences. A convict diagnosed with a mental disorder (illness) after a court conviction is relieved from serving a sentence. The goal of such a provision is to ensure that a convict realises the meaning and the very fact of his punishment. In such cases, court may order treatment to an individual in question.

According to Art. 176 of the Criminal Law Enforcement Code of the Republic of Belarus on suspending execution, upon detection of signs of a mental disorder (illness), the facility's administration should arrange for a medical examination of a convict by a commission of three specialist doctors. If a mental disorder (illness) is diagnosed and deprives a convict of his ability to understand the implications of his actions, the death sentence shall not be enforced and the medical examination report shall be sent to a respective court.

The latter shall suspend execution in respect of the convict and assign compulsory measures for the convict's safety and treatment following the procedures established by the Criminal Code. Should the convict regain his health, the question on execution or commutation of the death sentence shall be decided by a respective court.

However, despite human rights defenders reports about psychological torture and inhuman detention conditions of death convicts, their mental disorders proved by medical documents and reports of disorderly behavior of some convicts in death row, the mental state of convicts, whose death sentence had entered into effect, has never been examined.

"Vasil Yuzepchuk was reported to roll on cell's floor and sing," Siarhei Sys told the mission.[120] According to medical diagnosis No. 190, Vasil Yuzepchuk was officially diagnosed with an intellectual disability. He was illiterate and could not explain on what day and in what month events took place, he could only refer to "summer" and "winter" as time indicators. During the trial he claimed to have been given during interrogations unknown pills and alcohol and to have been subjected to torture. *"However, none of these circumstances were taken into account either by court, by punishment execution bodies or the Presidential Pardon Commission"*.[121]

"Pavel Selyun (Pavel Sialiun) had been hospitalized in a facility treating psychiatric disorders. Aliaksandr Hrunou had been registered in the local psychoneurologic dispensary," says activist Palina Stsepanenka. "They were all declared of sound mind by the court medical expertise, although severe doubts persist as to their state of mind at the moment of the crime." [122] Their mental state following the court sentence's entry into effect has not been examined either.

The case of Vasil Yuzepchuk

On 29 June 2009, 34-year-old Vasil Yuzepchuk was convicted of murdering elderly women, as well as of theft and robbery, and was sentenced to death. He was executed in March 2010 in violation of Belarus international commitment to halt executions until the convict's complaint is being reviewed by the UN Human Rights Committee.[123]

---

120. FIDH-HRC "Viasna" mission interview with Siarhei Sys, 27 June 2016.
121. FIDH-HRC "Viasna" mission interview with Siarhei Sys , 27 June 2016.
122. FIDH-HRC "Viasna" mission interview with Palina Stsepanenka, 27 June 2016.
123. "The Death Penalty in Belarus," https://www.fidh.org/IMG/pdf/knyga_en_web_1_.pdf, p. 65.

Vasil Yuzepchuk reported having been regularly subjected to physical and psychological torture during the preliminary investigation with an aim to self-incrimination. He claimed to have been kept in solitary confinement for prolonged periods of time, was denied food and forced to take unknown pills and alcohol, which affected his ability to think clearly. Police officers were also reported to have threatened to incarcerate his close relatives. The prosecutor's investigation of V. Yuzepchuk claims of ill-treatment refuted these claims. Yet the investigation failed to question witnesses, to obtain copies of the footage of the video surveillance of his cell and did not examine entries in the medical journal of the medical unit of the detention centre.[124]

The UN Human Rights Committee's Views adopted in 2014 - four years after the execution of V. Yuzepchuk - confirmed that V. Yuzepchuk's right to life had been violated by Belarus since he was sentenced to death in an unfair trial.

His guilt was proven only by his testimony during the preliminary investigation, as well as the testimony of another participant in the case that were also allegedly obtained through torture.

Since murders and robbing resembling the pattern judged by the court as that of Vasil Yuzepchuk continued in Brest oblast after the arrest and the execution of Vasil Yuzepchuk,[125] there is a supposition that he was executed for crimes committed by someone else.

II.6. INHUMAN DETENTION CONDITIONS

Detention conditions before the death sentence

As described in the section on arrest and pretrial detention, detainees are often put under psychological pressure, and law enforcement often uses excessive force as well as the practice of torture and other cruel, inhuman and degrading treatment.

Up until recently, death convicts whose appeal was pending Supreme Court's decision were forced to wear a robe with an inscription "Exceptional measure of punishment," although legally the verdicts had not yet entered into effect. After filing numerous complaints, human rights defenders achieved that this practice has not been used for the past two years.

As explained by Andrei Paluda, coordinator of the campaign "Human Rights Defenders against The Death Penalty in Belarus," the latter practice together with other violations of the presumption of innocence, create a situation where the *"Person is brought before the judge a priori as a criminal and, what is more, he appears before the judge as a death convict."*[126] A convoy is present during meetings with a lawyer. This curbs the defendant's lawful right to privately prepare for legal defence.

The testimony of a former prisoner convicted of a particularly grave crime describes the lack of medical care in pretrial detention:

"We weren't provided with any medical care in pretrial detention. The doctor stopped by and asked if anyone needed medical care. The newcomers, like me, who were there for the first time, answered that

124. UN Human Rights Committee, Communication No. 1906/2009, Views adopted by the Committee at its 112th session 7-31 October 2014.

125. "Another execution: a death sentence against Ryhor Yuzepchuk was carried out", http://spring96.org/ru/news/70985, in Russian only.

126. FIDH-HRC "Viasna" mission interview with Andrei Paluda, 29 June 2016.

they needed medical help to what the doctor replied, 'See my doctor's white uniform? You won't see it again.' And we didn't." [127]

Andrei Paluda informed the mission that *"recently we have been receiving reports that death convicts are being given tranquilisers and antidepressants. Moreover, taking into account their detention conditions, the effect of drugs quickly becomes insufficient and the dosage is reportedly being daily increased."* [128] In the absence of medical assistance, such forced treatment constitutes a dangerous malpractice.

All capital convicts are kept in the basement of the Minsk Pretrial Detention Centre No. 1 on Valadarski Street (also called "Valadarka," or "Piščalaŭski castle"), in conditions that have been reported by international human rights organisations, including the FIDH, as inhuman and degrading.

The issue of detention conditions in pretrial detention centers in Belarus falls outside the scope of the present report on death penalty. However, it is important to note that in the absence of any civilian control over detention facilities, available data on detention conditions raise a particular concern, such as the joint FIDH-HRC "Viasna" report "Conditions of detention in the Republic of Belarus"[129] and a recent HRC "Viasna" "Report on the results of monitoring places of detention in Belarus."[130]

Cases accounted in the latter report allow drawing a conclusion that law enforcement fail to promptly and efficiently investigate torture claims and claims of cruel, inhuman and degrading treatment with detainees.

None of the police officers involved in torture cases was dismissed for the period of investigation of such cases. Given the risks of pressure on witnesses and victims in torture cases, failure to dismiss officers suspected of torture casts a doubt on the impartiality of the investigation of torture claims.

According to Art. 174 of the Criminal Law Enforcement Code of the Republic of Belarus, death convicts are kept in high security cells. Death convicts are deprived of outdoor walks and lights are on 24/7.

Death convicts stay on death row from six months to 1.5 years on average. One of the former staff of the Pretrial Detention Centre No. 1 reports: *"There are three cells for death convicts, 6 to 3 meters large. All of them are equipped with video surveillance devices to permanently watch the inmates. Cells are being guarded 24/7. Two-third of the walls is painted beige whereas the ceiling and the upper part of the walls are white. The toilet is a pocket, fence is shoulder-high. Next to it is the sink. The ceiling, which is about 5 meters high, has a light bulb. The light is white and is always on. There is a radio that is on all day long.*

A bench and a table are welded to the floor. Above the table, there is a shelf for letters and a case file. The plank bed is very low, about 15 cm from the floor."[131]

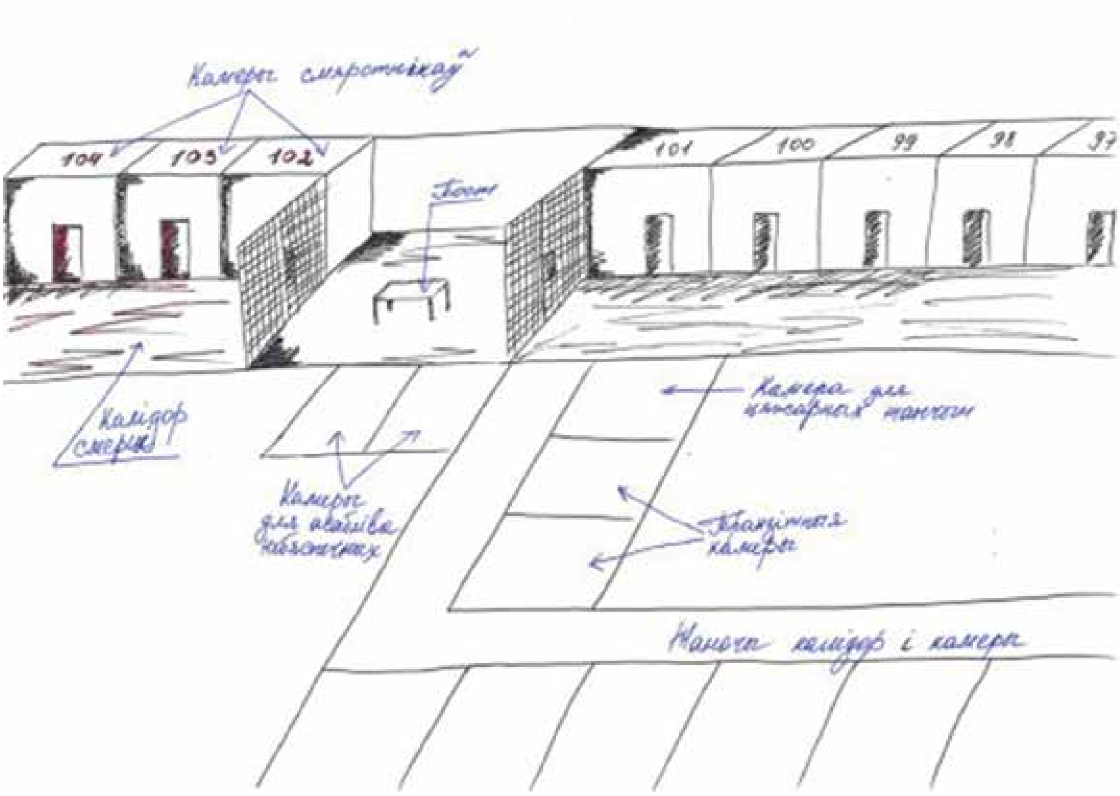
127. FIDH-HRC "Viasna" mission interview with Andrei Kniazkou, a former prisoner convicted of an especially grave crime, 29 June 2016.

128. FIDH-HRC "Viasna" mission interview with Andrei Paluda, 29 June 2016.

129. "Conditions of detention in the Republic of Belarus," https://www.fidh.org/IMG/pdf/Belarus500ang2008.pdf.

130. Report on the results of monitoring places of detention in Belarus, 2015, http://spring96.org/files/book/en/2015_prison_conditions_en.pdf.

131. "Death Row Secrets. Part 1," http://spring96.org/en/news/83354. [English edited]



Floor plan of death row cells No. 102, 103 and 104 in Pretrial detention centre No. 1 in Minsk, 2006. Source: HRC "Viasna"

Another witness K. described in detail the windows in the cell: *"From the inside the windows have narrow-meshed bars preventing the prisoners from reaching the window. From the outside there are so-called 'eyelashes' (sun blinds that cover the bottom part of the window and only allow the prisoner to see the sky) that are covered with narrow-meshed netting from the outside. A dim light coming from the window allows the prisoners to tell whether it's day or night."* [132]



Death row cell in pretrial detention centre No. 1 in Minsk, 2006. Source: HRC "Viasna"

132. "Death Row Secrets. Part 1," http://spring96.org/en/news/83354. [English edited]

Former staff of the Pretrial Detention Centre No. 1: *"From the very beginning, they face maximum security restrictions. It's nowhere written down, but it's a fact. The rules prohibit them to lie or sit on the plank beds from 6 am to 10 pm. They usually walk around the cell all day long. The death convicts have to wear special clothes. When they sleep, they must keep their hands above the blanket, no matter what their position: on their back or on their stomach.*

Death convicts are never taken out for a walk. It is prohibited by the law. Yet, there is a small yard in the new building. The death convicts are usually brought there after lunch during frequent inspections of cell walls <...>. Sometimes they can be locked in the shower, but most often they are kept in the yard. Each time a death convict leaves the cell, for example, to go to another building, there's additional guarding by dogs. This requires the presence or an order by the facility head." [133]

The latter information is confirmed by the former head of the Pretrial Detention Centre No. 1 Aleh Alkayeu in an interview "A murder is always a murder," published in the book "The death penalty in Belarus":[134]

"The cell door may be opened only in the presence of the head of the detention facility. The cell may not be opened without his order. [...] The cell is also opened for technical inspections: controllers check the cell with wooden hammers and batons. It takes place daily from 1 to 2 pm on the orders of the prison head. The door is opened to take the convicts to showers and for execution, they are also sometimes escorted to see a visitor. They are informed of such visits beforehand; they also write to their lawyers and know of their visits. Any other unanticipated procedure terrifies them." [135] Uncertainty concerning the date of execution leads to a permanent anguish.

As mentioned above, death convicts are issued a special uniform with an inscribed abbreviation of the words "Exceptional measure of punishment" which they must wear all the time.[136]

"While we were waiting in line to drop off our packages, people who were in the room with me were saying that it was 50 degrees in the cells, that their skin was peeling off," accounts a daughter of one of the death convicts.[137]

Moreover, reports of family members and lawyers collected during the mission have proven that the difference in treatment of convicts before and after the sentence enters into effect is staggering. For example, according to Anastasia Palchevskaya, the sister of Siarhei Khmialeuski currently on death row, after he was sentenced to death by the Judicial Collegium for Criminal Cases of the Minsk Regional Court and placed in Pretrial Detention Centre No. 1 on Valadarski Street in Minsk, there was a dramatic change in how prison staff treated him. According to Khmialeuski, he was frequently subjected to verbal taunts and psychological pressure from prison staff. The main point of this was to show that Khmialeuski's fate had already been decided, even though at that time the appeal court had not reviewed his cassation appeal.

The daughter of Henadz Yakavitski, who is also currently on death row, noticed a similar sharp change in how her father was treated: *"Since the sentence took effect, we had many problems handling administrative procedures, like changing his passport, or bequeathing property. At first they didn't want to issue him a passport at all. During one of our meetings, we were talking about how it takes a long*

133. "Death Row Secrets. Part 1," http://spring96.org/en/news/83354. [English edited]

134. "The Death Penalty in Belarus," https://www.fidh.org/IMG/pdf/knyga_en_web_1_.pdf, p. 67.

135. "The Death Penalty in Belarus," https://www.fidh.org/IMG/pdf/knyga_en_web_1_.pdf, p. 135. [English edited]

136. "Death Row Secrets. Part 2," http://spring96.org/en/news/83398.

137. FIDH-HRC "Viasna" mission interview with Aliaksandra Yakavitskaya, daughter of a convict on death row Henadz Yakavitski, 29 June 2016.

time to receive a new passport. The staff members in the room with us laughed and said, 'You still have a little time left." [138]

Barriers to realizing civil, legal, and family relationships violate Belarusian law, which reads that a person sentenced to death has the following rights:

1) to file a petition for pardon in conformity with the procedure established by the law (the procedure of filing an application for clemency and its consideration is regulated by the Regulation on the procedure of pardoning of convicts, approved by Presidential Decree No. 250 of December 3, 1994;
2) to meet with lawyers and other persons entitled to render legal assistance, without limitation of the number and duration of meetings;
3) to receive and send letters without restriction;
4) to have one short visit with close relatives every month;
5) to receive one parcel or transfer every three months in the order established by the administration of the correctional institution; to purchase foodstuffs and essentials every month in cashless transactions, using the money that are put on his personal account, including those received by mail transfer, within the limits established for the persons who are held in maximum security prisons;
6) to register the necessary civil, legal and family relations in accordance with the law;
7) to have meetings with a priest;
8) to receive necessary medical assistance.[139]

Thus, the rights of death convicts enshrined in laws of the Republic of Belarus are being systematically violated, often referring to internal rules of detention facilities imposed on death convicts. Interviewees of the FIDH-HRC "Viasna" mission shared information that confidential meetings with attorneys are refused to death convicts on the basis of internal instructions of the Pretrial Detention Centre No. 1 stating that personnel must "provide for oversight and security."[140] Thus, death convicts cannot privately meet with their lawyers, and the meetings themselves take place only following a written application by the prisoner.[141] It is important to emphasize here that the interviewees - family members of death convicts and lawyers - pointed to the fact that they systematically do not receive letters from the Pretrial Detention Centre No. 1.

The daughter of Henadz Yakavitski, currently on death row following the Supreme Court ruling of April 2016 to uphold the death sentence, told the FIDH-HRC "Viasna" mission: *"Since the death sentence entered into effect - it's been three months now - we systematically do not receive letters from him. So I am in a permanent state of uncertainty about his state and whether he's alive at all. Since April we have learned about an execution of one death convict and I had no possibility to find out what happened to my father. When I saw him at our next meeting, I asked him to write me. He told me that he had. I called everyone he had written, but none of these letters have ever arrived."* [142]

Mission interviewees believe that obstacles to correspondence are caused by the overall secrecy associated with the death penalty in Belarus.

Andrei Paluda thinks that the Penitentiary departement *"stopped letting letters through so that no*

138. FIDH-HRC "Viasna" mission interview with Aliaksandra Yakavitskaya, daughter of a convict on death row Henadz Yakavitski, 29 June 2016.
139. Art. 174 of the Criminal Law Enforcement Code of the Republic of Belarus [available in Russian: http://pravo.kulichki.com/vip/uik/00000014.htm#g22.]
140. FIDH-HRC "Viasna" mission interview with a lawyer of one of the death convicts, 28 June 2016.
141. FIDH-HRC "Viasna" mission interview with a lawyer of one of the death convicts, 28 June 2016.
142. FIDH-HRC "Viasna" mission interview with Aliaksandra Yakavitskaya, daughter of a convict on death row Henadz Yakavitski, 29 June 2016.

one would able to learn about the convict's situation, i.e. if he was still alive. We had one case where a convict numbered his letters. That is how we could tell if he was alive on a certain day. Now prison personnel don't allow this, they don't allow relatives to know if a convict has been shot or not".[143]

In regards to the right to meet with relatives, it is important to note that relatives must first arrive at the detention centre to fill out an application for a visit. After a few days they are notified of the date appointed for the meeting.

"You can't have a meeting the day of the filling of the application because there are special procedures to be prepared in advance to deliver a death convict to a meeting room, explains Andrei Paluda. *"All the staff are to stay away from the path to be taken by the convoy, no one is allowed to walk around the prison, and all the doors are locked except for the ones the convict is led through for his meeting. In fact, he is not being led but dragged by the convoy, bent towards the ground, as quickly that his feet almost do not touch the ground. One witness said that it was as if he flying through as a bird".*[144]



Death row inmates are forced to walk with their heads bent down their knees and hands in handcuffs high above their backs. In the photo: prisoners being brought out in Jodinsk Prison No. 8.Source HRC "Viasna".

Tamara Selyun (Tamara Sialiun), mother of Pavel Selyun (Pavel Sialiun) executed in 2014, confirms: *"He was bent over to the floor as a convoy of 10 people led him along. When I saw the number of guards they deploy to bring my son to see me, I couldn't help myself and asked ironically whether they needed to call for more guards."* [145]

In a letter written by death convict Ivan Famin to the HRC "Viasna" in 1999, he writes:

"There is real hell here...we are beaten for literally everything...you are beaten for writing an application to the medical department or calling a priest for confession. They also beat us if they are in a bad mood." [146]

143. FIDH-HRC "Viasna" mission interview with Andrei Paluda, 29 June 2016.
144. FIDH-HRC "Viasna" mission interview with Andrei Paluda, 29 June 2016.
145. FIDH-HRC "Viasna" mission interview with Tamara Selyun, mother of death convict Pavel Selyun, 29 June 2016.
146. "The Death Penalty in Belarus," https://www.fidh.org/IMG/pdf/knyga_en_web_1_.pdf, p. 135. p. 49.

Current legislation and law enforcement practice related to the secrecy of executions - the date of the execution is not communicated to the convict or to his family - together with detention conditions that amount to inhuman treatment have driven at least two death convicts to suicide.[147] Another likely reason of their suicide is that, in the event of a suicide, bodies are returned to the families. There were reports of other death convicts cutting their veins when shaving:

"The death convicts are given razors to shave. The convicts have to shave themselves and return the razors through a window. The guards watch them through these windows every 6-7 minutes. And suddenly a guard sees a convict cut his veins. Under the prison rules, only the prison head has the right to open the cell doors. He had to call the management to open the doors and prevent the convict from suicide. They saved him that time, but the suicide cases by cutting veins or neck are rather frequent as a result of psychological breakdown".[148]

The fact that the application of the death penalty in Belarus is shrouded in secrecy means that any information about detention conditions or the condition of death convicts is also secret. It is forbidden to speak about detention conditions during meetings.

Aliaksandra Yakavitskaya, daughter of Henadz Yakavitski, recounts: *"They brought him in with his head bent over so low as if he could shoot from his eyes. I was warned not to say anything extra to him. There's a sign in the meeting room prohibiting conversation about a number of issues: you can't talk about the criminal case, you can't give any names or addresses, you can't take photographs, you can't knock on the glass, you can't move around, you can't talk about detention conditions. Meetings take place in the presence of convoys".*[149]

II.7. EXECUTION

A death sentence that has entered into effect shall be carried out after an official notification is received that an appeal and an application for pardon have been denied. In accordance with Art. 175 of the Criminal Law Enforcement Code, the death penalty shall be carried out by firing squad with no members of the public present. The execution of the death penalty shall be carried out separately for each convict and without other death convicts present.
The execution date is not communicated. A convict spends months in death row which constitutes in itself a tough challenge to a human mind. On average, death convicts await execution for about a year, but there were cases of quick executions, as in the case of Kovalev and Kanavalau who were executed less than four months after their verdict came into force. Marozau, Danchanka and Harbaty whose case is analysed above, also spent only four months on death row.

The convict is executed moments after he's read an official notification on the denial of the Presidential pardon.

The former head of the Pretrial Detention Centre No. 1 Aleh Alkayeu in an interview to the campaign "Human Rights Defenders against the Death Penalty in Belarus" confirmed that convicts are in a state of extreme psychological tension during the period from pronouncement of the sentence

147. The exact circumstances of the suicide are not known. The case was reported by Aleh Alkayeu, former head of the SIZO 1 in Minsk (called Valadarka as it is located on the Valadarka street) where death convicts are executed. The information was retrieved from the book "Death penalty in Belarus" where Aleh Alkayeu explains: "There is a certain paradox in this situation, if a death row convict is killed in the cell or commits a suicide before the execution, his body will be issued. There was a case in Minsk where two inmates hung themselves on one rope in turn."

148. FIDH-HRC "Viasna" mission interview with Siarhei Sys, 27 June 2016.

149. FIDH-HRC "Viasna" mission interview with Aliaksandra Yakavitskaya, daughter of a convict on death row Henadz Yakavitski, 29 June 2016.

until the execution (see above). Aleh Alkayeu, who executed himself and supervised executions when in office, describes the shooting by squad:

"Through the underpass, employees of the special squad began to take out the convicts one by one. They were dressed in striped clothes and had slippers on. Their hands were tied behind their backs. They trembled either from cold or from fear, and their crazy eyes radiated such a real horror that it was impossible to look at them. Then the procedure of reading out the President's decision began. The prosecutor routinely specified the personal data of the person standing in front of us, then as usual he announced a decision to refuse pardon...The convict's eyes are bandaged so that he could not be oriented, and he is taken to an adjacent specially equipped room, where the executioner is waiting with a loaded gun. At a signal from the executioner two members of the squad lower the convict on his knees before a special bullet-stopping shield, after which the executioner shoots him in the head."[150]

A representative of the detention center, a prosecutor and a doctor are present during the execution. Other persons may be allowed to be present upon the permission of the prosecutor. The first person to approach the body is the doctor – to certify death.

An employee N. of the Pretrial Detention Centre No. 1, or "Valadarka" prison, told human rights defenders about the signs indicating to the guards and to other inmates the exact time of executions. Moreover, the death convicts can tell from the sound of the steps, who is coming for them:

"When a convict is being executed, all guards are removed, usually at night so that the prisoners could not learn about it and arrange an escape or riot. Everyone is forced to leave his post except for one assistant of the head of the detention facility on duty. Most likely the employees are led to the yard.

Therefore, every employee knows that when he is removed from his duty, there's an execution in progress, since they can only be removed on one occasion.

They shoot them in Valadarka, it is very convenient. The bodies are transported to Aĺšeŭski street, to a facility specialised in burial, and then to the North Cemetery and cremated." [151]

It should be added that human rights activists do not entirely share this view, as there is alternative evidence pointing to the fact that the executed prisoners are buried in numbered graves for unidentified persons so that they could be later exhumed. Here is what Slavamir Antanovich wrote in his book "Prisoners of the Piščalaŭski Castle" (another historical name of Pretrial Detention Centre No. 1), about the most classified phase of the death penalty application giving the execution of Aliaksandr Mezin in 1991 as an example:

"The doctor was the first to enter the execution room, all the rest followed him. ... The execution was documented in a report. Mezin's body was taken to the morgue in one of the Minsk hospitals where the doctor took the bullet out of the head and issued a death certificate. Using the certificate, the following day the officers of the firing squad received in the specialized burial facility on Aĺšeŭski street a coffin in which they buried the executed prisoner next to the homeless and other unidentified persons." [152]

150. "Death Penalty in Belarus," https://www.fidh.org/IMG/pdf/knyga_en_web_1_.pdf, p. 137.
151. "The Death Penalty in Belarus," https://www.fidh.org/IMG/pdf/knyga_en_web_1_.pdf, p. 138. [English edited]
152. Ibid, p. 137.

II.8. POST-EXECUTION. VIOLATION OF THE RIGHTS OF RELATIVES: "THE WORST IS NOT KNOWING"[153]

As mentioned above, the authorities disclose neither the date of the execution nor the place of burial. The body of the executed is not handed over to relatives. This is explained by the wish to avoid desecration of the bodies of those who committed serious crimes. Such practice, however, causes continued anguish and mental stress to relatives of death convict.

Such a state of affairs gives rise to various insinuations among relatives but also among the public suggesting that the refusal to hand over bodies of death convicts presupposes their use for other purposes, such as organ transplant:

"If they had said, 'Come and see,' I would have believed it all. But the body was not returned to me. I can't understand why. You know, they can do anything they want with bodies after execution," said Tamara Selyun (Tamara Sialiun), mother of Pavel Selyun (Pavel Sialiun).[154]

Furthermore, contrary to the national legislation, not only the relatives are not informed of the date of the execution, but the very fact of the execution itself is not communicated:

"It was only after a great deal of effort that I received notification that the death penalty had been carried out. But I don't believe anything that is in writing in this country." [155]

Journalists covering the topic of death penalty have also reported to the mission the difficulty they face in accessing information about execution of concrete death convicts:

Adarya Gushtyn accounts: *"In 2014, I contacted the Mahilioŭsk Regional Court to receive information about the execution of Vasil Yuzepuchuk, since no one had received any information about him. That time, the court sent an official notification that the death penalty had been carried out, but when I contacted the Supreme Court with a similar request regarding execution of the sentence of Eduard Lykau, I received a reply that this was not part of court's competence."* [156]

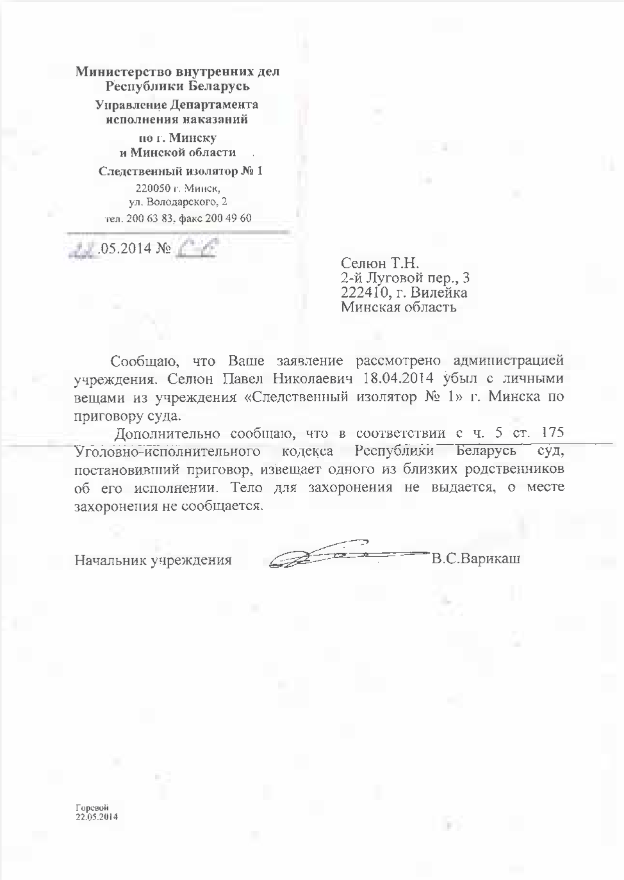
According to Art. 175 of the Criminal Law Enforcement Code, the management of the institution where the death penalty is carried out notifies thereof the court that handed down the death sentence. The latter in turn must notify one of the relatives. However, the law does not stipulate

the terms for notification, which allows for a situation when relatives are notified a month after the execution or even later. The law does not provide for notification of society of the execution.

It is common practice, although not established by national law, to return to relatives certain personal belongings of the death convict. They are mailed by post unaccompanied by any note once the death sentence is brought into effect. In some cases, this was how relatives learned about the execution. Some of the personal items, such as notes, diaries, letters, are not be returned to relatives. Meanwhile, if relatives file complaints against the practice of non-return of personal items, the prison administration refers to the Art. 175 which does not regulate the question of personal belongings at all.

153. FIDH-HRC "Viasna" mission interview with Tamara Selyun, mother of death convict Pavel Selyun, 29 June 2016.
154. FIDH-HRC "Viasna" mission interview with Tamara Selyun, mother of death convict Pavel Selyun, 29 June 2016.
155. FIDH-HRC "Viasna" mission interview with Tamara Selyun, mother of death convict Pavel Selyun, 29 June 2016.
156. FIDH-HRC "Viasna" mission interview with Adarya Gushtyn, 28 June 2016.

"My son kept a diary in prison, but it was not returned to me",[157] shared Tamara Selyun (Tamara Sialiun). After the execution of her son, she filed a request with the Penitentiary Department to hand over her son's personal belongings. On 22 May 2014, she received therefrom a strikingly cynical reply claiming that "Under a court ruling, on 18.04.2014 Selyun Pavel Nikolaevich left the Minsk Pretrial Detention Centre No. 1 together with his personal belongings."



Министерство внутренних дел
Республики Беларусь
Управление Департамента
исполнения наказаний
по г. Минску
и Минской области
Следственный изолятор № 1
220050 г. Минск,
ул. Володарского, 2
тел. 200 63 83, факс 200 49 60

22.05.2014 №

Селюн Т.Н.
2-й Луговой пер., 3
222410, г. Вилейка
Минская область

Сообщаю, что Ваше заявление рассмотрено администрацией учреждения. Селюн Павел Николаевич 18.04.2014 убыл с личными вещами из учреждения «Следственный изолятор № 1» г. Минска по приговору суда.

Дополнительно сообщаю, что в соответствии с ч. 5 ст. 175 Уголовно-исполнительного кодекса Республики Беларусь суд, постановивший приговор, извещает одного из близких родственников об его исполнении. Тело для захоронения не выдается, о месте захоронения не сообщается.

Начальник учреждения В.С.Варикаш

Горевой
22.05.2014

Official reply of the Penitentiary Department of the Ministry of the Internal Affairs of the Republic of Belarus dated 22 May 2014 to T.N. Selyun (Sialiun), mother of Pavel Selyun (Sialiun), who was executed in 2014. Source: HRC "Viasna"

After the execution of her son, Lyubov Kovaleva (Liubou Kavaliova) also received a parcel with her son's belongings from the KGB pretrial detention centre. However, the notes Vladislav Kovalev (Uladzislau Kavaliou) took during and after the trial were missing.[158] According to available information, Kavaliou and Kanavalau were kept in KGB pretrial centre and transferred to the Pretrial Detention Centre No. 1 for execution only.

On several occasions, relatives had filed lawsuits on the cruelty of the current legislation preventing them to be handed over the body of the executed. These efforts have so far not produced any tangible results.

After repeated appeals to the Ministry of Internal Affairs, to the Penitentiary Department and to the Supreme Court requesting notification on the fate of her son, handover of his personal belongings, disclosure of his place of burial or return of his body for burial, Tamara Selyun (Tamara Sialiun) received merely her son's prison uniform with inscription on the back "ИМН," meaning in Russian the abbreviation of "Exceptional measure of punishment." Pavel Selyun (Pavel Sialiun) wore the given

157. FIDH-HRC "Viasna" mission interview with Tamara Selyun, mother of death convict Pavel Selyun, 29 June 2016.

158. "The Death Penalty in Belarus," https://www.fidh.org/IMG/pdf/knyga_en_web_1_.pdf, p. 200.

uniform during detention awaiting execution. Tamara Selyun (Tamara Sialiun) saw him wearing it during a few visits she had with her son, including the last time she saw him.

"After everything that happened, I received a notification from the post office to pick up a parcel from Minsk. It was the robe and boots of my son. When I got home, I just didn't know what to do." [159] Afterwards Tamara Selyun (Tamara Sialiun) experienced severe mental stress. She cut up the uniform with an axe and burnt it close to her house. Even now, more than two years later, she claims her memories of that day cause tremendous mental suffering. Assisted by human rights defenders, she filed a complaint with the UN Human Rights Committee on cruel treatment of her son and herself.[160]



Prison uniform of Aliaksandr Hrunou executed in 2014. The uniform was sent to Hrunou's family after execution. Source: HRC "Viasna"

159. FIDH-HRC "Viasna" mission interview with Tamara Selyun, mother of death convict Pavel Selyun, 29 June 2016.
160. "A complaint on inhuman treatment in Belarus sent to the UN" [available in Russian: https://charter97.org/ru/news/2016/9/1/220283/comments/].

Case of Pavel Selyun (Pavel Sialiun)[161]

On 7 August 2012, Pavel Selyun (Pavel Sialiun) was arrested and brought to the police station of the Oktyabrsk district in the city of Hrodna. He was unknown to the law enforcement bodies since he was not previously convicted of any crime. He was charged with murder of two persons, theft, stealing passport and other important documents, and mutilation of a dead body committed on 5 August 2012.

When he was brought to the police station on 7 August 2012, he was put on the floor and beaten by several police officers. He was then interrogated and told that if he cooperated, it would help his case and he would only get years of imprisonment. The police officers also threatened that, if he did not confess, he would be subjected to sexual violence by other inmates. Officers also threatened to charge his brother with crimes. The author complained about this physical and psychological abuse during the trial, but the court considered that no violations against the author had taken place. During the initial interrogation on 7 August 2012, the police officers did not provide the author with a lawyer.

During more than six months of pretrial detention, the author did not have effective and continued access to his lawyers, and that the majority of the investigative actions, such as cross-examinations and interrogations, took place in the absence of a lawyer.

During the trial, he reported to have been placed in solitary confinement, that he was stripped of his clothes and left wearing only his underwear, that he was not given food, water or access to sanitary facilities. The author complained in court that the confessions that he had signed had been extracted under torture, and should not be retained as evidence. All these complaints were ignored by court.

During the trial, Pavel Selyun (Pavel Sialiun) was kept in a metal cage throughout the court hearings. A convoy of four officers forced the author to walk with his head bent down close to his knees, a special treatment for persons facing the death penalty.

His case was widely publicized in state-owned media even before the beginning of the court trial, and a popular TV channel in Belarus described him as a "criminal."

After the verdict was announced, the author was forced to wear a special robe with an acronym which indicated that he had been sentenced to death, even though the verdict had not yet entered in force.

On 2 October 2013, the UN Human Rights Committee registered the individual complaint of Pavel Selyun (Pavel Sialiun) on the matter or imposition of death penalty after an unfair trial and requested the Belarusian authorities not to carry out the death sentence while the case was under examination by the Committee. On 19 December 2013, the Committee reiterated its request. Despite the Committee's requests, on 18 April 2014, Pavel Selyun (Pavel Sialiun) was executed.

In the end of 2015, the UN Committee concluded in its Views that Belarus had violated Pavel Selyun (Pavel Sialiun)'s right to life, right not to be subject to torture and degrading, inhuman treatment, right to be brought promptly before the judge, the right to be presumed innocent, the right to legal defence and not to be forced to testify against himself.

161. From the UN Human Rights Committee Communication No. 2289/2013, Views taken in October - November 2015.

CONCLUSION

In Belarus, a number of violations accompany the application of the death penalty. Besides the infringement of the right to life, the death penalty is being applied in judicial proceedings that curb the right to due process and fair trial. Torture and ill-treatment are being widely used to force suspects to self-incriminate in the absence of a lawyer. The right to legal defence is being systematically violated. Moreover, as reported by the interviewees of the mission, lawyers and judges in Belarus generally lack independence, as does the judicial system as a whole.

In such a context, the probability of a wrongful conviction is very high. Irreversible wrongful convictions have already resulted in the death of innocent people during the Soviet period, as the case of Mikhalevich demonstrated. The current authorities deny that innocent people are being executed, however, several cases, including the case of Ivan Famin, executed in the late 1990s, and the case of Kavaliou and Kanavalau, that left multiple questions unanswered, give rise to even greater mistrust in the judicial system of Belarus. The case of Mikhail Hladki, who avoided the death penalty but spent seven years in prison for a murder he did not commit, is another blatant example of the country's dysfunctional justice system.

In a number of cases presented in the report, judicial proceedings failed to establish guilt beyond a reasonable doubt. Using self-incrimination as the main element for the prosecution often results in the lack of due investigation of the evidence and subsequently in hasty court proceedings. Multiple pieces of evidence demonstrate that self-incrimination is obtained under torture, and that physical and psychological pressure is used during investigation, especially during its preliminary phase, which gives rise to mistrust of court sentences.

Systemic denial of the right to private consultations with a lawyer as well as to sending and receiving correspondence leads to anguish and prevents relatives from receiving official documents from prison, for instance, a power of attorney to administer property or to send a communication to the UN Human Rights Committee (UN HRC).

So far, Belarus has systematically disrespected its international obligations under the ICCPR and its Protocol endowing the UN HRC with the authority to examine individual complaints of Belarusian citizens. Belarus has not only disregarded the recommendations by the UN HRC, but it has also proceeded with the executions despite Committee's requests to halt their enforcement pending an examination of the complaint by the Committee.

Detention conditions in Belarus in general are highly unsatisfactory and amount to ill-treatment prohibited by the International Covenant on Civil and Political Rights (ICCPR), the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and other international treaties ratified by Belarus.

Prisoners on death row are kept in total isolation, in complete uncertainty on their fate. and face a number of violations of their rights. Prison personnel consider them as not being among the living. Being under enormous psychological pressure, they are not allowed out for a walk and are particularly vulnerable to cruel and degrading treatment due to their complete isolation. Death convicts are officially forbidden from reporting about detention conditions to their lawyers and relatives and are subjected to humiliating treatment during the entire period of detention until execution. For instance, they are being transferred for visits - with a lawyer or relatives - in a humiliating pose by a convoy of several people carrying the convict bent down to his knees. This treatment cannot be explained by security measures.

Secrecy surrounding the topic of the death penalty in Belarus, including the issues of detention conditions, execution date and place of burial contrasts sharply with public statements by public officials and the media violating the presumption of innocence and other international norms of a fair trial by disclosing investigation information and by broadcasting the accused on television and referring to him as a "criminal" ahead of the court sentence.

Relatives of death row prisoners suffer terrible psychological anguish due to uncertainty and helplessness when faced with a blind and indifferent but not independent Belarusian justice system. They are in complete isolation from their relative knowing that his days are numbered. Their communication is hindered and in many cases even impossible. Finally, the date of the execution is not communicated and corpses are not returned to families. As a result, families do not even know the date of death and are deprived of the right to bury him in accordance with family traditions.

In 2016, Belarus has already convicted to death penalty three persons: Henadz Yakavitski, Siarhei Khmialeuski and Siarhei Vostrykau. Ivan Kulesh sentenced to death in 2015 awaits execution. Thus at the moment of the issue of the present report, four people are on death row. After the third death sentence in 2016 handed down to Homieĺ resident Siarhei Vostrykau on 19 May, the Belarusian justice system seems to have taken "a break" that might be related to the election campaign.

However, if the concerns of human rights defenders prove to be correct and the number of death sentences rises by the end of the year as they fear, in 2016 Belarus will have handed down the highest number of death sentences since 2007.

One can note that the number of death sentences has risen since the lifting in February 2016 of most EU restrictive measures against individuals responsible for human rights violations in Belarus. This tendency seems to question the approach described in the February 2016 Foreign Affairs Council Conclusions. The "opportunity for EU-Belarus relations to develop on a more positive agenda"[162] and to obtain "progress in a variety of fields" must be tested against the reality of concrete developments in the country in the sphere of the rule of law.

FIDH and HRC "Viasna" believe that the EU should state more explicitly that measures towards the abolition of the death penalty are among the main "tangible steps" expected to further develop relations between the EU and Belarus. On the other hand, the EU should state that the February 2016 review of restrictive measures is reversible and that the February 2017 review could well re-extend sanctions in the case of serious human rights violations.

The Belarusian authorities and first and foremost the President of the Republic of Belarus have to prepare society for the abolition of the death penalty, or at least for a moratorium on executions. Accounts presented in the present report, unfortunately, demonstrate a regressive trend. The head of state and state institutions under his control support the death penalty. Statements by the President, like the one quoted in the epigraph of the present report, resemble rather a caveman's call for revenge than a President's assessment of a criminal case.

Apart from taking measures aimed at the application of the death penalty, the Belarusian authorities have to launch serious reforms in the spheres of criminal procedural legislation and the penitentiary in order to eradicate cruel treatment of detainees. Such reforms require public debates, consultations with independent experts, nongovernmental organisations and intergovernmental structures (the Council of Europe and the EU). Accordingly, such reforms can only be successful

162. "Council Conclusions on Belarus", http://www.consilium.europa.eu/en/press/press-releases/2016/02/15-fac-belarus-conclusions/.

if non-governmental organisations are not hampered in their work and freedom of expression and media is ensured. Moreover, the Belarusian authorities have to regularize the status of NGOs whose registration had been revoked in the past and to establish a dialogue with all actors of local civil society, as well as with the European and international structures.

Third countries have to abstain from extraditing to Belarus. Due to inhuman treatment of detainees and lack of effective legal defence in criminal proceedings, extradited persons risk torture or even death.

Recommendations

To the Government of Belarus:

Regarding the use of the death penalty:

- Impose an immediate moratorium on death sentences and executions as the first step towards its abolition;

- Regularly provide society with complete and timely information about the use of the death penalty and make information on the executions public;

- Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), which is aimed at abolishing the death penalty;

- During the upcoming session of the UN General Assembly, vote in favour of the UN resolution calling for a global moratorium on death penalty, or abstain;

- Encourage public dialogue on the death penalty from the standpoint of human rights and compliance with international law, taking into consideration the experience of countries that have imposed a moratorium or abolished the death penalty;

- Comply with recommendations regarding the practice of the death penalty, the administration of justice, and the prevention of torture, addressed to the authorities by the UN Human Rights Committee and other UN human rights institutions and mechanisms, including the UN Special Rapporteur on the situation of human rights in Belarus and the Working Group on Arbitrary Detention, namely to:

    - Provide family members of the executed with information about the exact location of the burial site and with compensation for the anguish suffered, and prevent similar violations in the future;

    - Publish the UN Human Rights Committee's Views in Russian and Belarusian languages;

    - Provide individuals, whose ICCPR rights have been violated, with an effective remedy, including an impartial, effective and thorough investigation into torture claims and complaints, to prosecute those responsible, to ensure the right to an adequate compensation for the anguish suffered and to prevent similar violations in the future;

    - Pursuant to the First Optional Protocol to the ICCPR, cooperate in good faith with the UN Human Rights Committee, particularly in terms of implementing the Committee's requests to apply interim measures not to carry out death sentences while cases are under examination by the Committee;

    - Amend Art. 175 par. 5 of the Criminal Law Enforcement Code to bring it into compliance with Belarus' obligations under Art. 7 of the Covenant;

- Respect its international obligations under the First Optional Protocol to the ICCPR, in particular its Art. 1, which obligates parties to recognise the competence of the UN Human Rights Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by Belarus of any of the rights set forth in the ICCPR. Violation of Art. 1 of the Protocol by Belarus has been repeatedly confirmed by the UN Human Rights Committee.

Regarding the administration of justice:

- Guarantee the independence of the judiciary by setting clear rules regarding the process for appointing judges, their promotion and dismissal; appoint judges for life, without a probationary period; abolish the institution of "assistant judges";

- Guarantee the right to appeal death penalty sentences through a proper appeal process that would provide for a legal evaluation of the facts and evidence;

- Revoke the authority of higher courts to have a case sent up from a lower court for consideration as the first instance court;

- Introduce a judicial procedure to sanction pretrial detention in accordance with Art. 9 of the ICCPR;

- Introduce the right to appeal in court the actions and decisions of the investigation affecting the rights and freedoms of accused people and victims;

- Ensure the independence of bar associations;

- Adopt laws to prevent cases of torture;

- Ensure an independent and impartial investigation of torture claims; at a national level, introduce the institution of Ombudsman and other preventive measures to prevent torture;

- Establish criminal, civil, and administrative sanctions for violating legislative procedures (regarding arrest, interrogation, treatment of prisoners);

- Ratify the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in its entirety (make a statement on Art. 21 and Art. 22 of the Convention), ratify the Additional Protocol (Istanbul Protocol) to the Convention, which establishes a system for independent international groups to pay regular visits to detention facilities in order to prevent instances of torture and other forms of cruel, inhuman or degrading treatment, ratify the International Convention for the Protection of all Persons from Enforced Disappearance;

- Submit periodic state reports to the UN Committee against Torture and to the UN Human Rights Committee;

- Deliver a standing invitation to representatives of UN special procedures and provide an affirmative answer to the request of the UN Special Rapporteur on Torture to visit the country (this request was delivered in 2005);

- Ratify the European Convention for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment;

- Cooperate with OSCE institutions working on the human dimension, particularly with the Office for Democratic Institutions and Human Rights;

- Comply with the obligations undertaken within the framework of OSCE documents, particularly regarding the rule of law and civil and political rights, as well as regarding Belarus' obligations to provide society with information on the use of the death penalty.

Regarding detention conditions:

- Immediately amend the detention rules for individuals sentenced to the capital punishment in order to avoid their needless suffering and the anguish of their relatives;

- Guarantee that both pretrial and prison detention conditions conform to international human rights standards, particularly in relation to a full ban on torture, inhuman or degrading treatment and punishment (Art. 7 of the ICCPR); the Standard Minimum Rules for the Treatment of Prisoners; the Basic Principles for the Treatment of Prisoners; and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;

- Separate the functions of investigation and detention facilities management by transferring management of the latter to the Ministry of Justice;

- Guarantee regular checks of detention facilities by the prosecutor's office;

- Guarantee international and local NGOs access to places of detention;

- Ensure that victims of human rights violations in detention obtain adequate compensation that includes compensation for harm caused to health;

- Organize awareness raising training on human rights for the personnel of penitentiary institutions;

- Adopt legislative amendments to include the definition of torture used in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, dismiss staff members of the Ministry of Internal Affairs who have been involved in the use of torture, to conduct prompt, impartial, and thorough investigations of torture claims and prosecute violators.

To the new members of the 6th Convocation of the House of Representatives:

- Hold parliamentary hearings on the death penalty and continue parliamentary work aimed at imposing a moratorium and subsequently abolishing the death penalty.

To the United Nations:

To the UN Human Rights Council:

- Continue raising the issue of the death penalty in Belarus;

- Continue urging Belarus to ratify the Second Optional Protocol to the ICCPR, which is aimed at abolishing the death penalty.

To the UN General Assembly:

- Member states of the UN General Assembly must pay particular attention to the situation of human rights in Belarus, including detention conditions and the use of the death penalty.

To the Human Rights Committee:

- Monitor implementation of the Committee's recommendations in cases regarding the use of the death penalty and raise with the Belarusian authorities the issue on their nonobservance;

- Insist on receiving from the Government of Belarus information on measures taken to implement the Committee's Views and on making the latter public in Belarusian and Russian languages.

To the UN Office in Belarus:

- Encourage public debate on the use of the death penalty in Belarus and on the experience of countries that have imposed a moratorium or abolished the death penalty;

- Include all actors of civil society in public debate regardless of their legal status.

To the European Union and EU member states:

- Continue to consistently and strongly condemn death sentences and executions;

- Follow-up on each case of execution and ask the authorities to provide reports on the judicial process that led to the death sentence, on the conditions of detention on death row, and on the circumstances surrounding the execution, in order to put an end to the systematic state policy of keeping information about the death penalty secret;

- Draw attention to the issue of detention conditions within the framework of the dialogue with the Government of Belarus on various levels, particularly in the event of EU Troika meetings; deliver a demarche addressed to the Government of Belarus on the basis of the information set forth in this report, following the EU Guidelines against Torture and other Forms of Cruel and Degrading Treatment;

- Clearly state that the EU considers a moratorium on the death penalty as one of the major "tangible steps" which, once met, would be "key for the shaping of the EU's future policy towards Belarus" (Foreign Affairs Council Conclusions on Belarus, 15 February 2016);

- Pending a moratorium or abolition of the death penalty, call on the President to pardon death convicts and commute death penalty verdicts;

- Clearly indicate that the February 2016 decision not to prolong restrictive measures is not irreversible and that sanctions may be reintroduced in the event of serious human rights violations;

- Provide technical support to Belarusian government with an aim to:

    - Reform the Criminal Code;

    - Reform the judicial system to guarantee its complete independence and to guarantee the right to fair court proceedings, the presumption of innocence, and protection mechanisms to prevent confessions made under torture;

- Reform the penitentiary system to eliminate inhuman and degrading treatmentof prisoners, particularly those on death row.

- Support public debate on the question of abolishing the death penalty and involve international experts and all actors of Belarusian civil society regardless of their legal status.

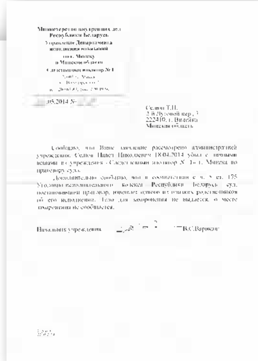
To the OSCE:

- The Office for Democratic Institutions and Human Rights (ODIHR) has a broad mandate in monitoring obligations undertaken by the states in the sphere of the human dimension. The ODIHR must carefully monitor detention conditions in Belarus and in particular the use of the death penalty, and consider the possibility of creating projects to cooperate in the sphere of the human dimension to eliminate the death penalty;

- The OSCE Parliamentary Assembly must draw attention to the facts set forth in this report and call on the Belarusian government to take legislative measures to bring its legislation into compliance with international standards.

ANNEX 1

Non-official English translation of the official reply from the Penitentiary Department of the Ministry of Internal Affairs of Belarus to Tamara Sialiun's request to hand over her son's personal belongings.



Ministry of Internal Affairs
Republic of Belarus
Administration of the Penitentiary Department
for Minsk and Minsk Oblast
Pretrial Detention Centre No. 1
2 Valadarski Street
Minsk, 220050
tel. 200 63 83 fax 200 49 60

22 May 2014   No. S-6

T.N. Sialiun
3 2nd Lugovoy Pereulok
Vileika, 222410
Minsk Oblast

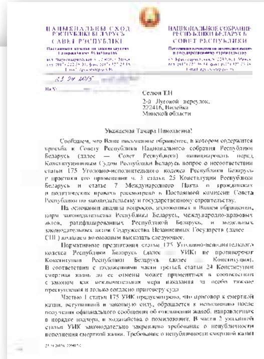
This is to inform you that your request has been reviewed by the institution's administration. On 18 April 2014, Pavel Mikalayevich Sialiun and his personal items were removed from Pretrial Detention Centre No. 1 in Minsk in accordance with the court's sentence.

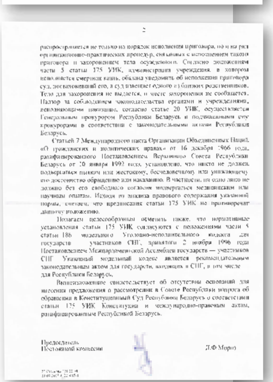
This is also to inform you that, in accordance with Article 175(5) of the Criminal Code of the Republic of Belarus, the sentencing court shall notify a close relative when the sentence has been carried out. The body shall not be released for burial, and relatives shall not be notified of the place of burial.

Head of the Administration   [signature]   V.S. Varikash

ANNEX 2

Non-official English translation of the official reply from the National Assembly of the Republic of Belarus to Tamara Sialiun's request to amend Art. 175 of the Criminal Law Enforcement Code as non-conforming to the Constitution and to instruments of international law ratified by the Republic of Belarus.





NATIONAL ASSEMBLY OF THE
REPUBLIC OF BELARUS
COUNCIL OF THE REPUBLIC
Standing Commission on Legislation
and State-building
9 Krasnoarmeyskaya Street, Minsk, 220016
tel: (017) 222 36 34, fax (017) 327 23 18
E-mail: zgs@sovrep.gov.by

23 April 2015 No. 27-Mn/728

T.N. Sialiun
2nd Lugovoi Pereulok
Vileika, 222416
Minsk Oblast

Dear Tamara Mikalayevna,

This is to inform you that your written request to the Council of the Republic of the National Assembly of the Republic of Belarus (henceforth, Council of the Republic) "to raise with the Constitutional Court of the Republic of Belarus the issue of non-conformity of Art. 175 of the Criminal Law Enforcement Code of the Republic of Belarus with Art. 25(3) of the Constitution of the Republic of Belarus and Article 7 of the International Covenant on Civil and Political Rights" has been reviewed by the Standing Commission of the Council of the Republic on Legislation and State-building.

Based on the study of the issues set forth in your request, and on the analysis of national and international norms ratified by the Republic of Belarus and that of exemplary laws of the Commonwealth of Independent States (henceforth, CIS), the following observations were made.

The normative prescriptions of Art. 175 of the Criminal Law Enforcement Code of the Republic of Belarus (henceforth, the CLEC) do not contravene the Constitution of the Republic of Belarus (henceforth, the Constitution). In accordance with the provisions of Art. 24(3) of the Constitution, until its abolishment, the death penalty may be applied in accordance with the law as an exceptional measure of punishment for especially grave crimes and only pursuant to a court sentence.

Art. 175(1) of the CLEC stipulates that a death sentence that has entered into force shall be carried out after official notification has been received that all appeals and petitions for pardon have been denied. Part 2 of the latter Article enshrines the requirement that execution of the death penalty shall not be made public. This requirement applies not just to procedures for carrying out the sentence, but also to a number of organisational and practical procedures related to carrying out a death sentence and burying the convict's body. Pursuant to the provisions of Art. 175(5) of the CLEC, the administration of the institution where the death penalty is carried out must notify of the execution the respective court that in turn shall notify one of the close relatives. The body shall not be issued for burial, and the place of burial shall not be made public. Pursuant to Art. 20 of the CLEC and in accordance with the laws of the Republic of Belarus, the Prosecutor General of the Republic of Belarus and his subordinates ensure oversight of compliance with the law of institutions carrying out executions.

Art. 7 of the International Covenant on Civil and Political Rights dated 16 December 1966, ratified by Resolution of the Supreme Court of the Republic of Belarus of 10 January 1992, establishes that no one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation. Based on an analysis of the legal content of this norm, we believe that the prescriptions of Article 175 of the CLEC do not contravene this provision.

It should also be noted that the normative standards of Art. 175 of the CLEC comply with the provisions of Art. 186(5) of the exemplary Criminal Law Enforcement Code for CIS member states adopted on 2 November 1996 by resolution of the Inter-parliamentary Assembly of the CIS. This exemplary code is recommended for CIS member states, including the Republic of Belarus.

The above analysis shows that there are no grounds for submitting the Council of the Republic a proposal to apply to the Constitutional Court of the Republic of Belarus regarding conformity of Art. 175 of the Criminal Law Enforcement Code with the Constitution and instruments of international law ratified by the Republic of Belarus.

Chairman of the
Standing Commission [signature] L.F. Moroz

Human Rights Center «Viasna»

Human Rights Center "Viasna" is a nongovernmental human rights organisation created in April 1996 during mass protest actions of the democratic opposition in Belarus. HRC "Viasna" provided legal aid to arrested demonstration participants and their families.

It is a nation-wide association with its head office in Minsk and regional offices in biggest Belarus cities.

For its participation in observing the 2001 presidential elections, HRC "Viasna" was groundlessly stripped of its state registration by a decision of the Supreme Court of the Republic of Belarus in 2003.

The primary objective of HRC "Viasna" is to contribute to the development of a civil society based on respect for the human rights set forth in the Universal Declaration of Human Rights and the Constitution of the Republic of Belarus.

Objectives of Human Rights Center "Viasna":

– Practical assistance to civic initiatives in the sphere of legal aid;
– Research into the state of civil society and legal aid;
– Dissemination of civic and legal knowledge;
– Democratic and legal education of citizens;
– Support to civic initiatives in the sphere of human rights;
– Facilitation of a spiritual and cultural renewal of the Belarusian state, which is the foundation of respect for human rights;
– Lead of the campaign "Human Rights Defenders against the Death Penalty in Belarus" launched in 2009 jointly with the Belarusian Helsinki Committee, with the aim of gaining public support for the abolition of the death penalty in Belarus. In addition to awareness-raising activities, the campaign is focusing on legal aid to family members of death convicts.

ВЯСНА
праваабарончы цэнтр

Human Rights Centre "Viasna"

viasna@spring96.org
www.spring96.org

Keep your eyes open

fidh

Establishing the facts - Investigative and trial observation missions
Supporting civil society - Training and exchange
Mobilising the international community - Advocacy before intergovernmental bodies
Informing and reporting - Mobilising public opinion

Director of publications: Dimitris Christopoulos
Editor-in-chief: Antoine Bernard
Authors: Alexandra Koulaeva, Julia Ouahnon
Coordinators: Andrei Paluda, Alexandra Koulaeva
Design: FIDH/Camille Lindeperg

For FIDH, transforming societies relies on the work of local actors.

The Worldwide movement for human rights acts at national, regional and international levels in support of its member and partner organisations to address human rights abuses and consolidate democratic processes. Its work is directed at States and those in power, such as armed opposition groups and multinational corporations.

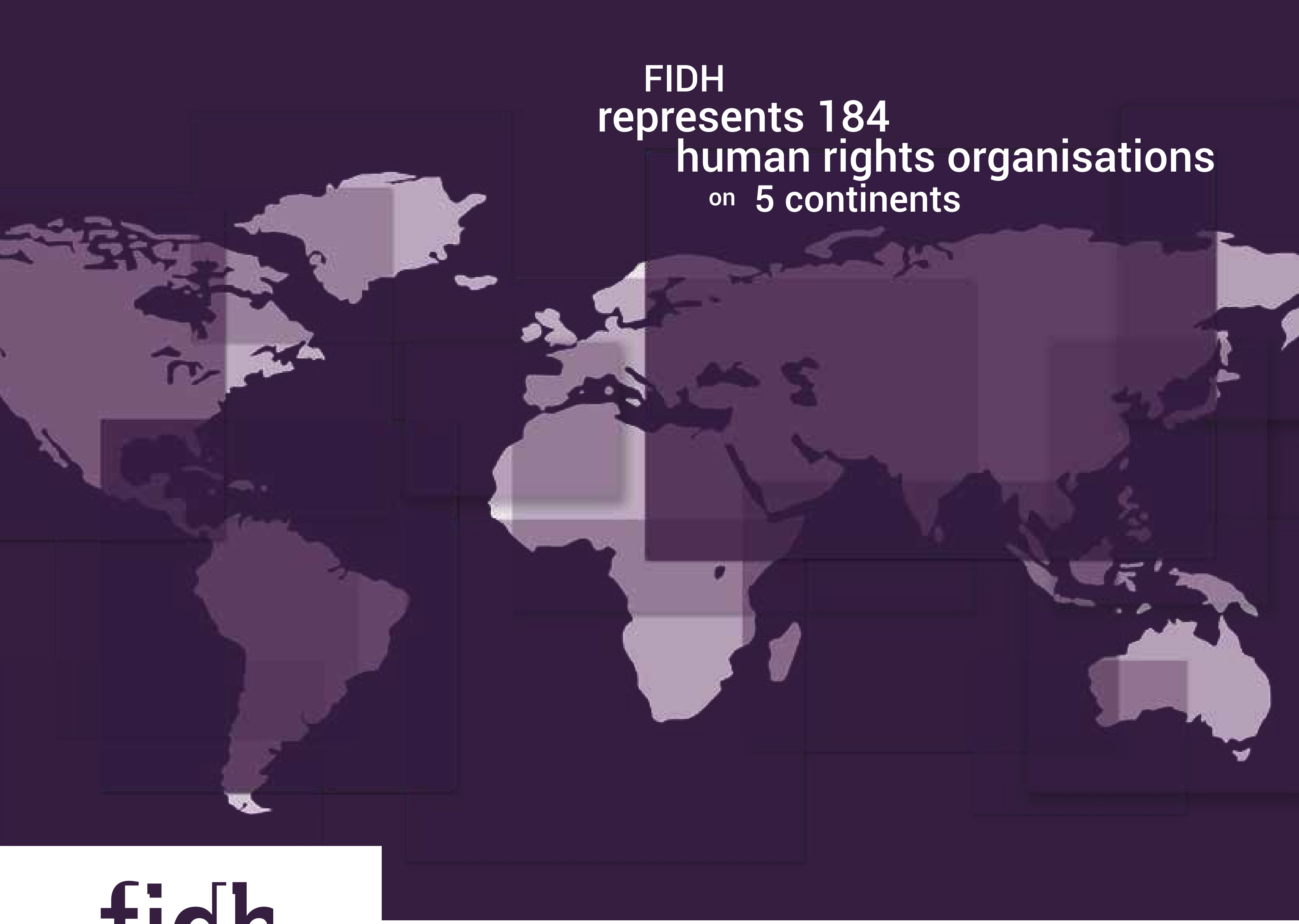
Its primary beneficiaries are national human rights organisations who are members of the Mouvement, and through them, the victims of human rights violations. FIDH also cooperates with other local partner organisations and actors of change.

fidh

CONTACT US

FIDH
International Federation for Human Rights
17, passage de la Main d'Or
75011 Paris
CCP Paris: 76 76 Z
Tel: (33-1) 43 55 25 18
Fax: (33-1) 43 55 18 80
www.fidh.org

Dépôt légal: octobre 2016 - FIDH (Russkoe izd.) ISSN 2218-1628 - Fichier informatique conforme à la loi du 6 janvier 1978 (Déclaration N°330 675)



fidh

ABOUT FIDH

FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

A broad mandate

FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.

A universal movement

FIDH was established in 1922, and today unites 184 member organisations in more than 100 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level.

An independent organisation

Like its member organisations, FIDH is not linked to any party or religion and is independent of all governments.